

**City of Antioch
Proposition 1E Grant Proposal
Attachment 7**

**Economic Analysis -
Flood Damage Reduction
Costs and Benefits**



City of Antioch
Proposition 1E Stormwater Flood Management Grant Proposal

ATTACHMENT 7 –
ECONOMIC ANALYSIS – FLOOD DAMAGE REDUCTION
COSTS AND BENEFITS

This attachment describes the flood damage reduction benefits provided by the *Drainage Area 55 – West Antioch Creek Channel Improvements Project*. In accordance with the PSP, the following details are provided:

PSP Requirements

- ✓ Description of the project and its relationship to other projects in the proposal **(see pg 7-1)**
- ✓ Narrative description of the project's economic costs **(see pg 7-3)**
- ✓ Cost details for the project **(see Table 10)**
- ✓ Narrative discussion of the projects expected flood reduction benefits, including:
 - Estimates of historical flood damage **(see pg 7-3)**
 - Estimate of with and without-project conditions **(see pg 7-7)**
 - Methods used to estimate with and without-project conditions **(see pg 7-5)**
 - Description of the distribution of local, regional, and statewide benefits **(see pg 7-7)**
 - Identification of beneficiaries **(see pg 7-7)**
 - When benefits will be received **(see pg 7-7)**
 - Uncertainty of benefits **(see pg 7-7)**
 - Description of any adverse effects **(see pg 7-7)**
- ✓ Narrative discussion that describes, qualifies and supports values entered in the tables **(see pgs 7-4 through 7-8)**
- ✓ Quantifiable estimates of economic flood damage reduction benefits **(see Table 12)**
- ✓ Documentation to support information presented for projects **(see attached lawsuit documentation at end of section)**

Task 1 - Drainage Area 55 - West Antioch Creek Channel Improvements

The following sections present a quantitative and qualitative analysis of project costs and flood damage reduction benefits. Flood damage reductions were calculated using the Flood Rapid Assessment Model (FRAM) developed for DWR. Tables 10, 11, 12 and 13 are included at the end of this section.

Project Description

The City of Antioch is partnering with the Contra Costa County Flood Control District (District) to address chronic flooding of West Antioch Creek through the installation of three 14' by 7' Caltrans Standard Box Culverts spanning 620 feet. These box culverts will increase the storm water capacity of the creek, replacing an inadequate concrete trapezoidal ditch and arch culverts. This installation will provide a 25-year level of flood protection (the maximum achieved without expanding the AT&SF RR crossing) to commercial and multi-family properties adjacent to the channel and within a Disadvantaged Community (DAC) by addressing a gap that currently exists between channel improvements made by the District in 1993 and the earthen channel on the Antioch Fairgrounds property.

This project will (1) **improve flood protection** for the community, including disadvantaged communities (DACs); (2) **eliminate the significant public health threat** to this Disadvantaged Community (DAC) caused by chronic flooding and exposure to constituents of concern in degraded flood waters; (3) **provide water quality and habitat protection benefits** by reducing flood-related debris and pollutant loading in West Antioch Creek, which flows directly into New York Slough, and (4) **provide recreation benefits**, as flooding in this area often results in the closure of the Contra Costa County Fairgrounds, the Antioch Little League Complex and Prosserville Park.

The *Drainage Area 55 – West Antioch Creek Channel Improvements Project* is a stand-alone project, and does not depend upon other projects in this Proposal to provide the benefits described.

A summary of all benefits and costs of the project are provided in Table 1.

Table 1 Benefit-Cost Analysis Overview

	Present Value
<u>Costs</u> – Total Capital and O&M	\$4,816,752
<u>Monetizable Benefits</u>	
Flood Control Benefits: Avoided losses in property damages, Avoided clean-up costs, Avoided traffic delays due to key road inundation (FRAM)	\$7,876,005
Total Monetized Benefits	\$7,876,005
<u>Qualitative Benefit or Cost</u>	Qualitative indicator*
Water Quality and Other Benefits	
Improved Public Health Protection	++
Improved Surface Water Quality	++

Avoided Loss of Recreation	++
Reduced Street Maintenance Costs	++
Flood Benefit	
Avoided Emergency Response Costs	++

O&M = Operations and Maintenance

* Direction and magnitude of effect on net benefits:

+ = Likely to increase net benefits relative to quantified estimates.

++ = Likely to increase net benefits significantly.

– = Likely to decrease benefits.

– – = Likely to decrease net benefits significantly.

U = Uncertain, could be + or –.

Economic Costs

The total cost for this project is \$5,997,600. These capital costs equate to \$4,816,752 in present value terms, as shown in **Table 10** at the end of this section. This includes initial spending starting in 2011 and continuing through 2013. The project lifetime is expected to be 50 years, and no annual costs are anticipated once the project is completed, in 2013.

Estimates of Historical Flood Damage

The project will address chronic flooding impacting a disadvantaged community in Antioch. Based on communication with City of Antioch staff, this area experiences severe flooding two to three times each year, with damage caused to local buildings and infrastructure and potential public health threats posed by exposure to degraded flood waters. Even during mild storms (1/2" - 1" of rainfall) flooding events in this area cause considerable loss of function. These chronic flooding events have impacted residents of multi-family housing units located adjacent to the creek. In addition, local businesses become inaccessible, resulting in loss of revenue. Portions of the Pittsburg-Antioch Highway, which serves as a major transportation artery to and from East Contra Costa County, and several minor roads are typically inundated and forced to close during these events.

This chronic flooding has caused multiple businesses to leave the area, including Anchor Glass, the major distributor of Snapple bottles, as well as a Ford dealership. In addition, flooding in this area often results in the closure of the Contra Costa County Fairgrounds, the Antioch Little League Complex and Prosserville Park.

In addition to the above-noted properties and the local residences, many other commercial establishments routinely experience flood-related damage in this area, including administrative offices and businesses located at the County Fairgrounds (Paradise Skate Rink, Delta RC Race Track, Antioch Charter School, So Big Pre-school, American Truck School, Trader Joe's Swap meet, and Antioch Auto Land), County Head Start Facility, Eames Used Car lot, Antioch Veterinary Hospital, local residents, Kelly's Cardroom, Scotto's Auto Body Shop and the City of Antioch's Maintenance Services Center. The flooding impacts include property and structural damages as well as loss of business due to accessibility issues.

Estimates of flood damage for smaller, chronic flooding events (associated with 0.5-yr, 1-yr and 5-yr storm events) and larger flooding events (associated with 20-year storms) are discussed below.

Estimates of Flood Damage for Smaller Chronic Flooding Events

The City has been named in multiple lawsuits related to flooding damages in the vicinity of the Project area. According to City staff, property damage resulting from the chronic smaller flood events is estimated to range from \$10,000 to \$50,000 per event. This estimate represents between 1 and 4 percent of the property value in the area (conservatively estimated to be about \$1.2 million based on a limited number of available assessments for the area).

Considerable emergency response costs are also incurred during these relatively frequent events. These costs are related to emergency flood response, security provision and flood clean-up. These floods also result in an inability to provide the community with essential city services due to impacts to the City's Maintenance and Service Center. The flooding levels and associated damages increase in more severe events, such as a 25-year storm. Based on communications with Antioch staff, two to three times per year, flooding events occur that require significant clean-up efforts. These cleanup efforts have historically cost the City between \$2,500 to \$5,000.

Estimates of Flood Damage for Larger Flooding Events (e.g., 20 year storms)

While historic assessments of flood damage from larger storm events are currently unavailable, estimates may be derived from the following records: (1) a lawsuit filed on behalf of the Holiday Lodge Motel in 2000; and (2) a lawsuit filed by the Anchor Glass Container Corporation in 1993.

Holiday Lodge Lawsuit. The Holiday Lodge Motel, located at 1500 W. 10th Street in Antioch, filed a lawsuit in response to flooding that occurred at this location on February 23, 2000, as a direct result of the inability of the gap between the 1993 channel improvements and the earthen channel on the Antioch Fairgrounds property. According to the complaint, several feet of running water inundated the parking lot and several rooms, ***causing more than \$700,000 in damage during this single event*** (see lawsuit information attached). The National Weather Service reported approximately 1.7 inches of rainfall in the area during the preceding 24-hour period.

Anchor Glass Container Corporation Lawsuit. The Anchor Glass Container Corporation, formerly located at 1400 W. 4th Street in Antioch, filed a lawsuit in response to flooding that occurred at this location on January 12 and 13, 1993. According to the complaint, ***flooding from the rainfall event resulted in damages in excess of \$3,300,000*** (see lawsuit information attached).

Table 2 provides a summary of estimated structural damages and clean-up costs for a 0.5, 1, 5, and 20-year storm. Based on the damages reported in the lawsuits above, it is estimated that more significant flood damages average about \$2,000,000 per event. This amount represents the average amount of claimed damages in the two lawsuits following larger rainfall events. This assumption is expected to be very conservative, as the \$700,000 in damage to the Holiday Lodge was reported to result from a relatively minor storm in the year 2000, and the total damages to the Anchor Glass Container Corporation were reported to be in excess of \$3.3 M, as the lawsuit only covered losses covered by the insurance policy. According to the City of Antioch staff, clean-up costs associated with these larger storm events average about \$10,000 per event.

Description of Expected Flood Reduction Benefits

Currently, flooding occurs two to three times per year. Following project implementation, the new box culverts will accommodate stormwater runoff up to a 25-year event. Flood benefits include avoided structural damage, avoided clean-up costs and avoided inundation of the Pittsburg-Antioch Highway and minor local roads, and avoided closure of local recreation areas. To quantify the benefits of implementing the *Drainage Area 55 – West Antioch Creek Channel Improvements Project*, avoided flood damage was monetized using the DWR’s Flood Rapid Assessment Model (FRAM).

FRAM Inputs

A PDF of the Inputs tab from the FRAM model has been included at the end of this attachment. A summary of these inputs is provided below:

Storm Events. Given that this project would provide protection against a 25-year flood event, FRAM was used to determine avoided flood damages from the following storm events: 0.5-year, 1-year, 5-year and 20-year events.

Probability of Levee Failure. Since even the smallest rain event causes flooding in the subject project area at least 2 to 3 times a year, the probability of levee failure was estimated to be 100% for “without project conditions.” Following project implementation, which is designed to provide protection against a 25-year storm event, it was assumed that the probability of levee failure would be reduced to 0%.

Damage Estimates. For each of these storm events, the structural damage and clean-up cost estimates discussed earlier in this attachment were used as inputs to the model (see Table 2).

Table 2 – Structural Damage and Clean Up Cost Estimates for Flooding Caused by Small Storm Events¹

Storm Event	Structural Damage Estimates	Clean-up Costs
0.5 year storm	\$10,000	\$2,500
1-year storm	\$25,000	\$2,500
5-year storm	\$50,000	\$5,000
20-year storm	\$2,000,000	\$10,000

1. Estimates provided by City of Antioch staff

Both residential and commercial properties are impacted by flooding events in the project area. For the smaller storms, it was assumed that the damages were evenly split between residential and commercial properties. For the larger 20-year storm event, it was assumed that 90% of the damages were commercial and the 10% of the damages were residential. This assumption was made since the two lawsuits for larger storm events were brought forth by commercial property owners.

Road Inundation. In addition, estimated levels of road inundation were developed for these storm events. Since several blocks of 7th St., 8th St., 9th St., O St., and L St. are flooded during even minor events, it was assumed that inundation of minor roads ranged from 0.2 miles in the 0.5-year storm to 2.5 miles for the 20-year storm. For the 5-yr and 20-year storm, it was assumed that 0.2 and 0.5 miles, respectively, of an arterial roadway is also inundated since the Pittsburg-Antioch Hwy, which serves as a major transportation artery to and from East Contra Costa County, is forced to shut down during these events.

The pictures below show flooding and associated road inundation in the Project area following a March 24, 2011 storm in which 1.35" of rainfall was recorded. Implementation of the *Drainage Area 55 – West Antioch Creek Channel Improvements Project* would address these flooding issues.



Summary of Projected Benefits (With and With-Out Project Conditions)

Using these assumptions, flood damages and with-project damage reductions were estimated using FRAM. Based on the assumptions above, the estimated annual average damages as calculated by FRAM without the project are \$499,688. With the project, estimated annual damages are reduced to \$0, for a total annual project benefit of \$499,688. Based on a 6% discount rate over 50 years, the present value of future benefits from the proposed project are \$7,876,005. Results are summarized in **Table 12**, and a PDF of the BCA Summary tab from the FRAM model is included at the end of this attachment.

This project has a present value cost of approximately \$4.8 M. Based on conservative assumptions applied within the FRAM model, it generates flood damage reduction benefits for a disadvantaged community with a present value of nearly \$7.9 million.

Project Beneficiaries and Distribution of Benefits

The proposed project includes a full range of beneficiaries, as summarized in Table 3. At the local level, residents and business owners within the affected disadvantaged community will benefit from reduced flooding. This may lead to enhanced economic development within the area, improving the economic condition of the community as a whole. In addition, contaminated flood waters will no longer flow through this urbanized area and to the Delta, providing Delta water quality benefits at the regional and statewide level.

Table 3. Project Beneficiaries Summary

Local	Regional	Statewide
City of Antioch residents and businesses	Sacramento-San Joaquin Bay-Delta	Sacramento-San Joaquin Bay-Delta

Timing of Benefits

This project will be implemented over a three-year period from 2011 through 2013. It is assumed that the full flood protection benefits, up to the 25-year event, will be realized immediately on completion of the project. For the purposes of this analysis, we have assumed a project life of 50 years. In reality, however, it is likely that the project life will extend beyond that horizon, making the estimated \$7.9 M in benefits over the project life a conservative estimate.

Uncertainty of Benefits and Adverse Effects

This analysis of costs and benefits is based on available data and some assumptions. As a result, there may be some omissions, uncertainties, and possible biases. In most cases, omissions lead to a downward bias in benefits. Some uncertainty exists due the facility life, the unknown assessed value of property in the area, precise extent of property damage and cleanup costs, and exact distance of roadway inundation associated with each storm interval. However, the assumptions incorporated in this analysis have been scaled back to intentionally provide a conservative estimate of benefits. These issues are listed in Table 4.

Table 4. Omissions, Biases, and Uncertainties, and Their Effect on the Project

Benefit or Cost Category	Likely Impact on Net Benefits*	Comment
Facility life	+	Facility life is likely to be 75 – 100 years. This analysis has conservatively assumed a 50-year facility life. Should the facility life be longer than assumed, present value benefits would exceed \$7.9 M.
Property Values and Damage	+	As stated in the text, the property values assumed were based on information provided by City Staff and compared against available property assessment information. These values represent a subset of potentially-affected property and therefore may understate the potential flood reduction benefits.
Distance of Roadway Inundation	+	The distance of roadway inundation was conservatively based on anecdotal evidence. Historically, Highway 4, a major roadway in the area, has flooded adjacent to the project site. Because the extent of flooding and the interval of the storm event necessary to achieve such flooding are unknown, this information has not been included. If the actual roadway inundation is greater than assumed, the result would be an increase in benefits.
Cleanup Costs	+	Cleanup costs were provided in a range. The lower end of the cost range was utilized as a conservative assumption. If cleanup costs are greater than those assumed, project benefits would be greater than those presented.
<p>*Direction and magnitude of effect on net benefits: + = Likely to increase net benefits relative to quantified estimates. ++ = Likely to increase net benefits significantly. - = Likely to decrease benefits. -- = Likely to decrease net benefits significantly. U = Uncertain, could be + or -.</p>		

Documentation Supporting Benefits

The following references were used to develop the cost and benefit analyses described in this section:

- Personal communication with Phil Harrington, Director of Capital Improvements/Water Rights, City of Antioch (12/16/2010).
- Personal communication with Carl Roner, Assistant Civil Engineer, Contra Costa County Flood Control and Water Conservation District (12/16/2010).
- Holiday Lodge Motel vs. City of Antioch. Case No. COO-04830, Superior Court of California, County of Contra Costa.
- Anchor Glass Container Corporation et al v. Contra Costa County Flood Control and Water Conservation District. Case No. C 94-00042, Contra Costa County Superior Court.

Economic Benefit Tables

Capital costs for the project amount to \$4,816,752 in present value terms, as shown in **Table 10**. This includes initial spending starting in 2011 and continuing through 2013. The project lifetime is expected to be 50 years, and no annual costs are anticipated once the project is completed, in 2013.

As described above, flood damages were estimated using the FRAM; as such, **Table 11** is not included. **Figure 1** presents the loss-probability curve developed for the project using the FRAM model. Table 12 presents the results of the FRAM analysis. Based on this analysis, using a project life of 50 years and a 6% discount rate, the present value of expected benefits is estimated to be \$7,876,005.

Table 13 is not applicable to this project since the flooding is not related to seismic events.

Table 10- Annual Cost of Flood Damage Reduction Project

(All costs should be in 2009 Dollars)

Project: Drainage Area 55 - West Antioch Creek Channel Improvements Project

	Initial Costs	Operations and Maintenance Costs ⁽¹⁾						Discounting Calculations	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
YEAR	Grand Total Cost From Table 6 (row (i), column(d))	Admin	Operation	Maintenance	Replacement	Other	Total Costs (a) +...+ (f)	Discount Factor	Discounted Costs(g) x (h)
2009							\$0	1.000	\$0
2010							\$0	0.943	\$0
2011	\$282,167						\$282,167	0.890	\$251,128
2012	\$862,000						\$862,000	0.840	\$724,080
2013	\$4,850,433						\$4,850,433	0.792	\$3,841,543
2014								0.747	
2015								0.705	
2016								0.665	
2017								0.627	
2018								0.592	
2019								0.558	
2020								0.527	
2021								0.497	
2022								0.469	
2023								0.442	
...								...	
...								...	
Project Life								...	
Total Present Value of Discounted Costs (Sum of Column (i))									\$4,816,752
Transfer to Table 20, column (c), Exhibit F: Proposal Costs and Benefits Summaries									
Comments: Project implementation is expected to decrease costs associated with maintaining the project area when compared to the without-project condition. As such, administrative, operations and maintenance costs have conservatively been excluded from this analysis. All costs are in 2009 dollars.									

(1) The incremental change in O&M costs attributable to the project.

Table 11: Event Damages
Drainage Area 55 – West Antioch Creek Channel improvements

NOT APPLICABLE
(FLOOD DAMAGES CALCULATED USING FRAM)

Figure 1: Loss Probability Curve (Generated by FRAM Model)

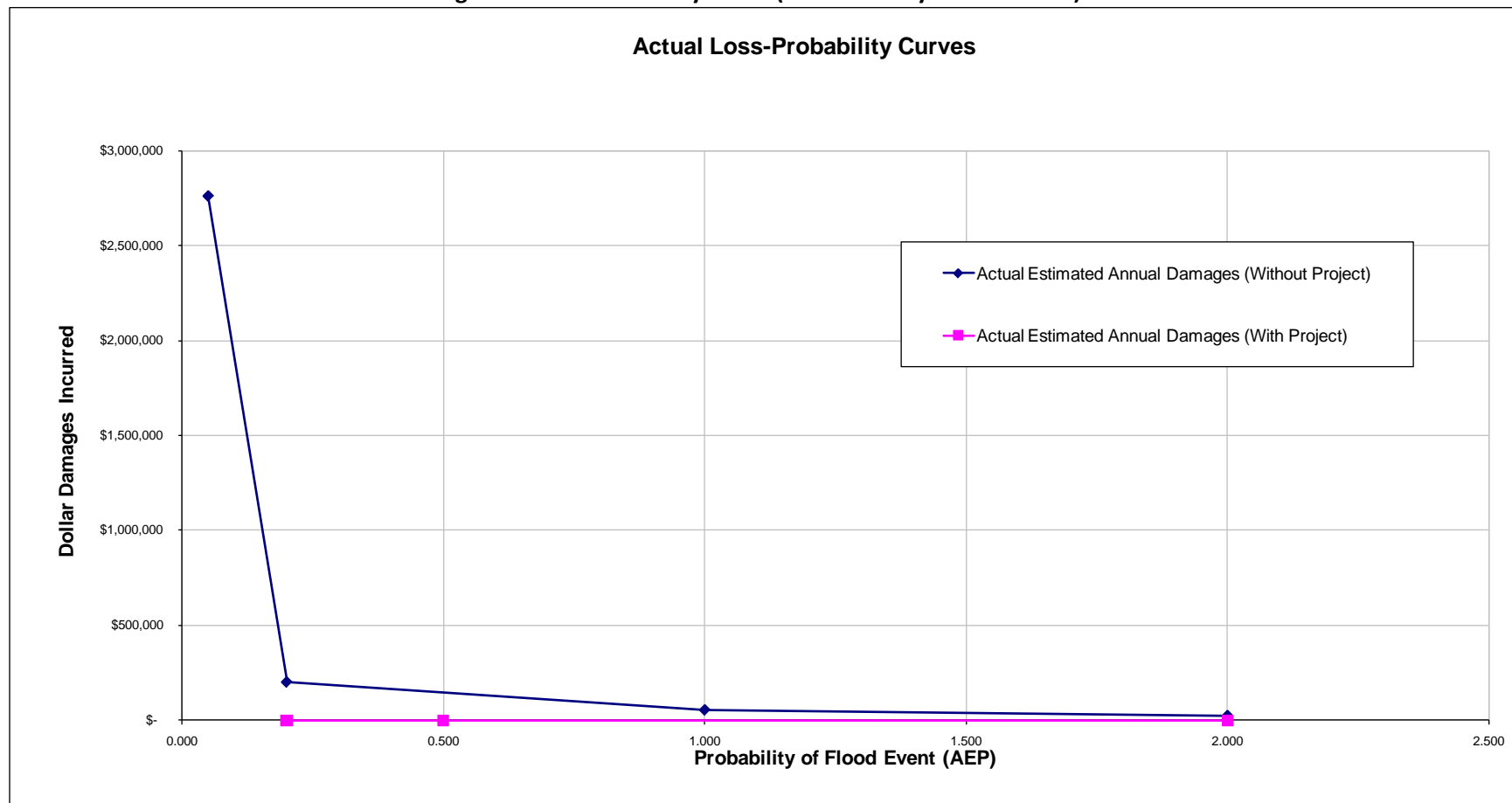


Table 12 - Present Value of Expected Annual Damage Benefits Project: Drainage Area 55 - West Antioch Creek Channel Improvements Project			
(a)	Expected Annual Damage Without Project (1)		\$499,688
(b)	Expected Annual Damage With Project (1)		\$0
(c)	Expected Annual Damage Benefit	(a) – (b)	\$499,688
(d)	Present Value Coefficient (2)		15.76
(e)	Present Value of Future Benefits Transfer to column (e) Table 20: Proposal Costs and Benefits Summaries.	(c) x (d)	\$7,876,005

(1) This program assumes no population growth thus EAD will be constant over analysis period.

(2) 6% discount rate; 50-year analysis period (could vary depending upon life cycle of project).

Table 13: Minimum Seismic Failure Economic Damages
Drainage Area 55 – West Antioch Creek Channel improvements

NOT APPLICABLE

Attachments:

The following technical documents have been included to support the economic analysis:

- Holiday Lodge Motel vs. City of Antioch. Case No. COO-04830, Superior Court of California, County of Contra Costa. 2000.
- Anchor Glass Container Corporation et al v. Contra Costa County Flood Control and Water Conservation District. Case No. C 94-00042, Contra Costa County Superior Court. 1993.
- PDFs of the following tabs from FRAM: Inputs Tab, BCA Summary

Holiday Lodge Motel v. City of Antioch (2000)

Filed

Oct 20, 2000

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

ASSOCIATED INTERNATIONAL
INSURANCE COMPANY, C.B. PATEL and
GOVIND PATEL dba HOLIDAY LODGE
MOTEL,

Plaintiffs,

vs.

CITY OF ANTIOCH; COUNTY OF
CONTRA COSTA; CONTRA COSTA
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT (CONTRA
COSTA FLOOD CONTROL), and DOES 1
through 10, inclusive,

Defendants.

CASE NO. C 00-04380

Complaint Filed: Oct 10, 2000

COMPLAINT IN SUBROGATION
FOR DAMAGES FOR:

- 1) INVERSE CONDEMNATION
- 2) NEGLIGENCE
- 3) NUISANCE
- 4) TRESPASS
- 5) DANGEROUS CONDITION OF
PUBLIC ENTITY'S PROPERTY

Per Local Rule 5
This Case is
Assigned to Dept 17

Plaintiffs allege:

GENERAL ALLEGATIONS

1. Plaintiff, ASSOCIATED INTERNATIONAL INSURANCE COMPANY ("AIIC"),
is a corporation qualified to do business in the State of California. AIIC is a property and casualty
insurance company.

2. Defendant, CITY OF ANTIOCH is a public entity organized and existing under the
laws of the State of California.

1 3. Defendant, COUNTY OF CONTRA COSTA is a public entity organized and existing
2 under the laws of the State of California.

3 4. Defendant, CONTRA COSTA FLOOD CONTROL AND WATER
4 CONSERVATION DISTRICT (CONTRA COSTA FLOOD CONTROL) is a public entity
5 organized and existing under the laws of the State of California.

6 5. Defendants CITY OF ANTIOCH, COUNTY OF CONTRA COSTA, and CONTRA
7 COSTA FLOOD CONTROL AND WATER CONSERVATION DISTRICT (CONTRA COSTA
8 FLOOD CONTROL) are hereinafter referred to as "Defendants."

9 6. Plaintiffs, C.B. PATEL and GOVIND PATEL dba HOLIDAY LODGE MOTEL
10 ("PATELS"), are individuals who own and operate the Holiday Lodge Motel, located at 1500 W.
11 10th Street, in Antioch, California, which is adjacent to the West Antioch Flood Control Channel
12 (hereinafter "Flood Control Channel").

13 7. AIIC issued an insurance policy to the PATELS, which policy was in effect for the
14 period from December 24, 1999 through December 24, 2000. Said insurance policy, bearing policy
15 number IM 322501, insured the location at 1500 W. Tenth Street, in Antioch, California ("The
16 Property.") A true and correct copy of the policy is attached hereto as Exhibit "A" and made a part
17 hereof.

18 8. On or about February 23, 2000, several feet of running water poured from the Flood
19 Control Channel into the Insured's hotel parking lot and subsequently inundated many of the rooms,
20 thereby destroying a majority of the hotel rooms and personal property contained therein. As a
21 result, the PATELS suffered losses in the form of building damage, loss of business personal
22 property, and loss of business income.

23 9. AIIC paid the PATELS for their losses covered by the policy in the amount of
24 \$324,983.29 for structural damage, \$98,300.80 for business personal property, and \$104,670.00 for
25 loss of business income, all for a current grand total of \$527,954.09 for resultant damage. This
26 figure does not include payments not yet made to the PATELS. The PATELS have uninsured losses
27 in the amount of \$25,000.00, which represents the policy deductible. By virtue of these payments,
28 AIIC is subrogated to and is assignee of the rights of the PATELS, including their rights for



1 recovery of these payments against Defendants and each of them. The full amount of the PATELS'
2 damage is not known to AIIC at this time, and Plaintiffs will move to amend this complaint to state
3 such amount when the same becomes known, or on proof thereof.

4 10. On or about August 11, 2000, Plaintiff presented its claim to the CITY OF
5 ANTIOCH, COUNTY OF CONTRA COSTA, and the CONTRA COSTA FLOOD CONTROL
6 AND WATER CONSERVATION DISTRICT (CONTRA COSTA FLOOD CONTROL) by mailing
7 a claim to the clerk for the damages and losses incurred by reason of the above-described
8 occurrence, all in compliance with the requirements of California Government Code §§ 905, 910.
9 A copy of the claims are attached hereto as Exhibit "B" and made a part hereof.

10 11. On or about September 19, 2000, Defendant COUNTY OF CONTRA COSTA
11 rejected the claim in its entirety. A copy of the Notice of Rejection of Claim is attached hereto as
12 Exhibit "C" and made a part hereof.

13 12. Defendants CITY OF ANTIOCH and CONTRA COSTA FLOOD CONTROL AND
14 WATER CONSERVATION DISTRICT (CONTRA COSTA FLOOD CONTROL) failed to act on
15 the claim within the period of 45 days after serving notice of claim, and the claim was thus deemed
16 rejected, under the provisions of California Government Code §§ 912.4, at the expiration of the 45-
17 day period on September 25, 2000.

18 13. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as
19 Does 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names.
20 Plaintiffs will amend this complaint to allege their true names and capacities when ascertained.
21 Plaintiffs are informed and believe and thereon allege that each of these fictitiously named
22 Defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiffs'
23 damages as herein alleged were proximately caused by their conduct.

24 14. Plaintiffs are informed and believe and thereon allege that at all times herein
25 mentioned Defendants and Does 1 through 10, inclusive, and each of them were the agents, servants
26 and employees of their co-Defendants and in doing the things hereinafter mentioned were acting
27 within the course and scope of their authority as such agents, servants, and employees with the
28 permission and consent of their co-defendants.



1 **FIRST CAUSE OF ACTION**

2 **(Inverse Condemnation)**

3 **(Against All Defendants)**

4 15. Plaintiffs reallege paragraphs 1 through 14, inclusive, and incorporates said
5 paragraphs herein by reference as though set forth in full.

6 16. At all times herein mentioned, the PATELS were owners of the following described
7 real property: 1500 W. Tenth Street, in the city of Antioch, California, Contra Costa County,
8 California.

9 17. Defendants are owners and/or are responsible for the maintenance, operation of,
10 planning, approval, design, construction, operation of, improvement, modification, or substantial
11 participation in the condition of, the Flood Control Chanel, which crosses Tenth Street in the City
12 of Antioch adjacent to the PATELS' property.

13 18. As a direct and necessary result of Defendants' poor and improper maintenance,
14 operation of, planning, approval, design, construction, operation of, improvement, modification, or
15 substantial participation in the condition of, the Flood Control Channel, the PATELS' property was
16 flooded on or about February 23, 2000. Plaintiffs are informed and believe and thereon allege that,
17 due to the Defendants' failure to properly operate and maintain the Flood Control Channel, the
18 PATELS' and others' property will continue to be flooded in the future and is evidenced by two
19 previous documented flooding losses to the PATELS' property which occurred in 1997 and
20 February of 1998 as a result of Flood Control Channel flooding.

21 19. The above-described damage to the PATELS' property was proximately and
22 substantially caused by Defendants' poor and inadequate maintenance, operation of, planning,
23 development, approval, design, construction, operation of, improvement, modification, or substantial
24 participation in the condition of, the Flood Control Channel, in that no provision was made for
25 controlling the flow of water onto the surrounding land, thus damaging adjacent property, including
26 that of the Insured, and endangering life.

27 20. As a result of the above-described damage to the PATELS' property, AIIC and the
28 PATELS have been damaged in an amount which exceeds \$700,000, including building damage,



1 business personal property damage, and loss of business income. The full amount of such expenses
2 is not known to Plaintiffs at this time, and Plaintiffs will move to amend this complaint to state such
3 amount when the same become known, or on proof thereof.

4 21. As such, Defendants' conduct and the resultant damage constitutes a taking of the
5 PATELS' property pursuant to the California Constitution, Art. I, §19.

6 22. Plaintiffs have incurred and will incur attorney's appraisal, and engineering fees
7 because of this proceeding, in amounts that cannot yet be ascertained, which are recoverable in this
8 action under the provisions of Code of Civil Procedure Section 1036.

9 **SECOND CAUSE OF ACTION**

10 **(Negligence)**

11 **(Against All Defendants)**

12 23. Plaintiffs reallege paragraphs 1 through 22, inclusive, of this complaint as fully set
13 forth herein.

14 24. Plaintiffs are informed and believe and thereon allege that at all relevant times
15 Defendants, and each of them, were under a duty to exercise reasonable care in the maintenance,
16 operation of, planning, development, approval, design, construction, operation of, improvement,
17 modification, or substantial participation in the condition of the Flood Control Channel, including,
18 but not limited to: compliance with applicable municipal, city, and state codes; compliance with
19 standards, customs and practices in the community of developers, builders, manufacturers, material
20 suppliers, contractors and/or designers of public works; compliance with plans, specifications,
21 contracts and construction documents for flood control; and provision of all supervision, services,
22 labor and materials in a good and workmanlike manner.

23 25. Plaintiffs are informed and believe and thereon allege that Defendants, and each of
24 them, breached their respective duties of care to the Plaintiff and the Insured by negligently and
25 carelessly failing inter alia to use reasonable care in the maintenance, operation of, planning,
26 development, approval, design, construction, operation of, improvement, modification, or substantial
27 participation in the condition of the Flood Control Channel: compliance with applicable municipal,
28 city, and state codes; compliance with standards, customs and practices in the community of



1 developers, builders, manufacturers, material suppliers, contractors and/or designers of public
2 works; compliance with plans, specifications, contracts and construction documents for flood
3 control; and provision of all supervision, services, labor and materials in a good and workmanlike
4 manner.

5 26. The negligence of Defendants, and each of them, actually and proximately caused
6 flooding damage to the PATELS' property in an amount which exceeds \$700,000, including
7 building damage, business personal property damage, and loss of business income. The full
8 amount of such expenses is not known to Plaintiffs at this time, and Plaintiffs will move to amend
9 this complaint to state such amount when the same become known to him/her, or on proof thereof.

10 **THIRD CAUSE OF ACTION**

11 **(Nuisance)**

12 **(Against All Defendants)**

13 27. Plaintiff realleges paragraphs 1 through 26, inclusive, and incorporates said
14 paragraphs herein by reference as though set forth in full.

15 28. Defendants have a duty and are responsible for the maintenance, improvement and
16 monitoring of the Flood Control Channel. In maintaining, improving, or modifying the Flood
17 Control Channel, Defendants caused the rain waters to flood and damage the PATELS' land and
18 property. Defendants have failed and neglected, and still fail and neglect, to provide proper
19 facilities, or any facilities, for handling the waters so as to prevent their overflowage and seepage
20 onto the PATES' property and the resulting damage to the PATELS.

21 29. The Flood Control Channel, a natural watercourse, runs adjacent to, through and
22 across the PATELS' property. Prior to and on February 23, 2000, extensive rain waters flowed
23 through the Flood Control Channel and ran off into adjacent properties, including property of the
24 PATELS. Defendants' maintenance and control of the Flood Control Channel is poor and
25 inadequate to properly handle the runoff from the Flood Control Channel, thus damaging property
26 and continually posing a threat to adjacent persons and property.

27 30. During the period from 1997 to the present time, and in particular, on February 23,
28 2000, waters from the Flood Control Channel flooded, and continue to threaten to flood, the



1 PATELS' property and land. The waters greatly exceeded the waters that would normally have
2 flowed on the PATES' land and property during the period had maintenance, operation,
3 improvements and modifications of the Flood Control Channel by Defendants been properly carried
4 out.

5 31. As a proximate result of Defendants' failure to properly maintain, operate, improve
6 or modify the Flood Control Channel, PATELS' land and properties were destroyed. Several feet
7 of running water poured into the PATELS' hotel parking lot and subsequently inundated many of
8 the rooms, all to Plaintiffs' damage in the sum that exceeds \$700,000, including building damage,
9 loss of business personal property, and loss of business income.

10 32. The maintenance, operation and control by Defendants of the Flood Control Channel
11 has obstructed the PATELS' free use of their land and property so as to interfere with the
12 comfortable enjoyment of life and property and thus constitutes a nuisance in that the PATELS' use
13 and enjoyment of their land and property is continuously threatened with flooding, damage, and
14 destruction from the adjacent Flood Control Channel.

15 33. On or about March through June 2000, Plaintiffs gave Defendants' notice of the
16 damage and claim herein. Defendants refuse to comply with the Plaintiffs demand that Defendants
17 provide proper facilities, provisions, maintenance and improvements to protect the Insured's and
18 adjacent property from the Flood Control Channel and to prevent waters from flowing onto the
19 PATELS land and property.

20 34. Defendants' poor maintenance of the Flood Control Channel constitutes a nuisance
21 and Plaintiffs are thereby entitled to damages. The full amount of such damage is not known to
22 Plaintiffs at this time, and Plaintiffs will move to amend this complaint to state such amount when
23 the same become known, or on proof thereof.

24 FOURTH CAUSE OF ACTION

25 (Trespass)

26 (Against All Defendants)

27 35. Plaintiffs reallege paragraphs 1 through 34, inclusive, and incorporates said
28 paragraphs herein by reference as though set forth in full.



36. On or about February 23, 2000, Defendants, and each of them, without Plaintiffs' consent, and as a direct and necessary result of Defendants' plan, design, maintenance, operation, and modification of the Flood Control Channel, the PATELS' property was flooded on or about February 23, 2000. In addition, two previous documented flooding losses to the PATELS' property occurred in 1997 and February of 1998 as a result of flooding from the Flood Control Channel. Plaintiffs are informed and believe and thereon allege that, due to the Defendants' failure to properly operate and maintain the Flood Control Channel, the PATES and others' property will continue to be flooded in the future.

37. As a proximate result of the aforementioned conduct, the Flood Control Channel flooded the PATELS' property and damaged a majority of the rooms in the PATELS' motel, thus causing damage to the building, personal property and loss of business income, all to Plaintiffs' damage in an amount which exceeds \$700,000. The full amount of such expenses is not known to Plaintiffs at this time, and Plaintiffs will move to amend this complaint to state such amount when the same become known, or on proof thereof.

38. The aforementioned acts of the Defendants were willful, oppressive and malicious in that Defendants poorly and inadequate maintained and operated, and continue to maintain and operate, the Flood Control Channel with full awareness of its history and danger of flooding and its potential threat to persons and property, despite this knowledge and in conscious disregard of the PATELS' and others' physical safety and mental well being. Plaintiffs are therefore entitled to punitive damages.

FIFTH CAUSE OF ACTION

(Dangerous Condition of Public Entity's Property)

(Against All Defendants)

39. Plaintiffs reallege paragraphs 1 through 38, inclusive, and incorporates said paragraphs herein by reference as though set forth in full.

40. On or about February 23, 2000, and prior thereto, the Flood Control Channel was in a dangerous condition which created a substantial and unreasonable risk of death or serious bodily harm and it was reasonably foreseeable that it would flood neighboring property and the condition



1 was not reasonably apparent to, and would not be anticipated by, a mature reasonable person using
2 the property with due care.

3 41. Defendants had actual knowledge of the existence of the condition and knew, or
4 should have known, of its dangerous character a sufficient period of time prior to the injury to have
5 taken measures to protect against the dangerous condition.

6 42. On or about February 23, 2000, the PATELS and their hotel patrons were lawfully
7 on the above-described property and, as a proximate result of the dangerous condition of the
8 adjacent property, the PATELS' property was damaged by flood waters from the Flood Control
9 Channel, causing the PATELS the injuries herein alleged.

10 43. As a proximate result of the aforementioned conduct, the Flood Control Channel
11 flooded the PATELS' property and damaged a majority of rooms in the motel, thus causing damage
12 to the building, personal property and loss of business income, all to Plaintiffs' damage in an amount
13 which exceeds \$700,000. The full amount of such expenses is not known to Plaintiffs at this time,
14 and Plaintiffs will move to amend this complaint to state such amount when the same become
15 known, or on proof thereof.

16
17 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

18 **FIRST CAUSE OF ACTION**

19 1. For damages in excess of \$700,000 with interest thereon at the legal rate from the date
20 of the damages;

21 2. For reasonable attorney's, appraisal, and engineering fees according to proof;

22 3. For costs of suit herein incurred; and

23 4. For such other and further relief as the court may deem proper.

24 **SECOND CAUSE OF ACTION**

25 1 For damages in excess of \$700,000;

26 2 For costs of suit herein incurred; and

27 3 For such other and further relief as the court may deem proper.

28 ///

THIRD CAUSE OF ACTION

1. For damages in excess of \$700,000;
2. For costs of suit herein incurred; and
3. For such other and further relief as the court may deem proper.

FOURTH CAUSE OF ACTION

1. For general damages in excess of \$700,000;
2. For punitive damages;
3. For costs of suit herein incurred; and
4. For reasonable attorney's fees according to proof; and,
5. For such other and further relief as the court may deem proper.

FIFTH CAUSE OF ACTION

1. For damages in excess of \$700,000 with interest thereon at the legal rate from the date of the damages;
2. For reasonable attorney's, appraisal, and engineering fees according to proof;
3. For costs of suit herein incurred; and
4. For such other and further relief as the court may deem proper.

DATED: October 11, 2000

CUMMINS & WHITE, LLP

By:

James R. Wakefield, P.C.
Attorneys for Plaintiff
ASSOCIATED INTERNATIONAL
INSURANCE COMPANY, C.B. PATEL and
GOVIND PATEL dba HOLIDAY LODGE
MOTEL


**ASSOCIATED INTERNATIONAL
INSURANCE COMPANY**
INSURANCE POLICY (Multi-Purpose Form)
Policy No. IM 322501

 REPLACING **NEW**

NAMED INSURED C.B. PATEL AND GOVIND PATEL
DBA: HOLIDAY LODGE MOTEL
MAILING ADDRESS 1500 W. 10TH STREET
 ANITOCH, CA 94509

CROUSE & ASSOCIATES
 100 PINE STREET, SUITE 2900
 SAN FRANCISCO, CA 94111

TERM (years) 1 **INCEPTION (month, day, year)** 12/24/1999 **EXPIRATION (month, day, year)** 12/24/2000
 12:01 A.M. STANDARD TIME AT THE ADDRESS OF THE NAMED INSURED AS STATED ABOVE

Insurance is provided against only those perils and for only those coverages indicated below by a premium charge and against other perils and for other coverages only when endorsed hereon or added hereto.

ITEM NO.	LIMIT(S) OF LIABILITY	RATE(S)	PREPAID TERM PREMIUM DUE AT INCEPTION	ANNUAL PAYMENT	DEDUCTIBLES	
					AMOUNT	APPLYING TO
1.	\$ 2,240,000.	\$ VARIOUS	\$ 5,683.00	\$	\$ PER FORM IM/DICI DECLARATION PAGE ITEM 4	
			100.00 POLICY FEE 200.00 INSPECTION FEE			
TOTAL OF ANNUAL PAYMENTS FOR POLICY TERM			TOTAL(S) \$ 5,983.00	\$		

In consideration of the stipulations herein named and of the premium specified the Company does insure the insured named above herein called the insured whose address is shown above, from the inception date, to the expiration date, both shown above, to an amount not exceeding the amount above specified on the following described property.

ITEM	AMOUNT OF INSURANCE	DETAILED DESCRIPTION
1	\$2,240,000.	DIFFERENCE IN CONDITIONS INCLUDING EARTHQUAKE AND FLOOD, EXCLUDING THEFT AND YEAR 2000 RELATED LOSSES, 100 YEAR FLOOD ZONES AND BUILDING ORDINANCE, COVERING REAL PROPERTY, BUSINESS PERSONAL PROPERTY, INCLUDING SIGNS, ELECTRONIC DATA PROCESSING, BUSINESS INCOME AND EXTRA EXPENSE. LOCATION(S): 1) 1500 W. 10 TH STREET, ANITOCH, CA 94509

LOSS PAYABLE CLAUSE: LOSS, IF ANY, TO BE ADJUSTED ONLY WITH THE INSURED AND PAYABLE TO THE INSURED AND.

ENDORSEMENTS ATTACHED IM/DICI, IM/DEN, IM/UARCE, IM/MEPC, IM/RC, IM/TE, IM/BIEE, IM/EDP, CF 572, GU 520,
ENDORSEMENT NOS. 1-4

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto as provided in this policy.

JANUARY 03, 2000 **WOODLAND HILLS, CALIFORNIA**
COUNTERSIGNATURE DATE **COUNTERSIGNED AT:**
COUNTERSIGNED BY: **AUTHORIZED REPRESENTATIVE**

In witness whereof, the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the Company.

 SECRETARY

 PRESIDENT

04/19/2000 15:57

9259451311

DL GLAZE WC

PAGE 00



ASSOCIATED INTERNATIONAL INSURANCE COMPANY
21820 BURBANK BLVD., SUITE 330 WOODLAND HILLS, CA 91367 • 818-706-0600 • FAX 818-706-0378



CALVERT INSURANCE COMPANY
TWO HUDSON PLACE, HOBOKEN NJ 07030 • 201-798-9500 • FAX 201-798-9451

ENDORSEMENT #: 4	POLICY NUMBER IM 322.501	INSURED: C.B. PATEL AND GOVIND PATEL DBA: HOLIDAY LODGE MOTEL
EFFECTIVE: 12/24/1999		
NO ENTRY REQUIRED ABOVE IF THIS ENDORSEMENT IS PART OF THE ORIGINAL POLICY ISSUANCE		

IT IS HEREBY UNDERSTOOD AND AGREED ITEM 5, MEDIA FOR ELECTRONIC DATA PROCESSING, UNDER ARTICLE C, LIMITATIONS AND EXCLUSIONS, OF FORM IM/BIEE (7/93), BUSINESS INTERRUPTION/EXTRA EXPENSE INSURANCE IS HEREBY DELETED.

IT IS FURTHER UNDERSTOOD AND AGREED THAT THE TERMS AND CONDITIONS OF FORM NO. CF 572 (8-98), BUSINESS INCOME AND/OR EXTRA EXPENSE COVERAGE FOR YEAR 2000 COMPUTER-RELATED AND OTHER ELECTRONIC PROBLEMS SHALL APPLY.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

BROKER/AGENT: CROUSE & ASSOCIATES
SAN FRANCISCO, CA

DATE OF ISSUE: JANUARY 03, 2000

ASSOCIATED INTERNATIONAL INSURANCE COMPANY

BY _____
AUTHORIZED REPRESENTATIVE



☒ ASSOCIATED INTERNATIONAL INSURANCE COMPANY
21820 BURBANK BLVD., SUITE 330 WOODLAND HILLS, CA 91367 • 818 595-0600 • FAX 316-0378

☐ CALVERT INSURANCE COMPANY
TWO HUDSON PLACE, HOBOKEN NJ 07030 • 201-798-9500 • FAX 798-9451

ENDORSEMENT #: 3	POLICY NUMBER	INSURED:
EFFECTIVE: 12/24/1999	IM 322501	C.B. PATEL AND GOVIND PATEL DBA: HOLIDAY LODGE MOTEL

NO ENTRY REQUIRED ABOVE IF THIS ENDORSEMENT IS PART OF THE ORIGINAL POLICY ISSUANCE.

100 YEAR FLOOD ZONES

FLOOD COVERAGE IS HEREBY EXCLUDED ON ANY LOCATION INSURED
HEREUNDER LOCATED IN A FEDERALLY DESIGNATED 100 YEAR FLOOD ZONE.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

BROKER/AGENT: CROUSE & ASSOCIATES
SAN FRANCISCO, CA

DATE OF ISSUE: JANUARY 03, 2000

ASSOCIATED INTERNATIONAL INSURANCE COMPANY

BY _____
AUTHORIZED REPRESENTATIVE



ASSOCIATED INTERNATIONAL INSURANCE COMPANY
21820 BURBANK BLVD., SUITE 330, WOODLAND HILLS, CA 91367 • 818-595-0600 • FAX 316-0380

CALVERT INSURANCE COMPANY
21820 BURBANK BLVD., SUITE 330, WOODLAND HILLS, CA 91367 • 818-595-0600 • FAX 316-0380

ENDORSEMENT # 2	POLICY NUMBER	INSURED:
EFFECTIVE: 12/24/1999	IM 322501	C.B. PATEL AND GOVIND PATEL DBA: HOLIDAY LODGE MOTEL

DEFINITION OF BUILDINGS AND/OR STRUCTURES

I. Page 3, Paragraph 2 of the Difference in Conditions Form IM/DIC1 is amended as follows:

2. **PROPERTY OR INTEREST COVERED** - This policy covers property only as indicated in Item 1 of the declarations and as described below:

Item A - Building(s) and /or Structures(s) including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery and
 - (b) Equipment;
- (4) Personal property owned by the insured that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, air-conditioning, ventilating, cooking, dishwashing or laundering;
- (5) Foundations of buildings, structures, machinery or boilers, underground pipes, flues or drains including water, electrical, communication and sanitary systems;
- (6) Roadways, walks, patios or other exterior paved surfaces;
- (7) Fences, signs;

Page 1 of 2



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ENDORSEMENT # 2	POLICY NUMBER	INSURED:
EFFECTIVE: 12/24/1999	IM 322501	C.B. PATEL AND GOVIND PATEL DBA: HOLIDAY LODGE MOTEL

(8) If not covered by other insurance:

- (a) Additions under construction, alterations and repairs to the building or structure;
- (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

II. Page 3, Paragraph 3, **PROPERTY EXCLUDED**, of the Difference in Conditions Form IM/DIC1 is amended to include:

- (M) (1) Bridges;
- (2) The cost of excavations, grading, backfilling or filling;
- (3) Bulkheads, pilings that are not part of a building, piers, wharves or docks;
- (4) Retaining walls that are not part of a building;
- (5) Radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.

The items in Subparagraph (M) above may be added to coverage by endorsement if values are reported separately and additional premiums are paid.

Page 2 of 2

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

BROKER/AGENT: CROUSE & ASSOCIATES
SAN FRANCISCO, CA

ASSOCIATED INTERNATIONAL INSURANCE COMPANY

DATE OF ISSUE: JANUARY 03, 2000

BY _____
AUTHORIZED REPRESENTATIVE



ASBESTOS INTERNATIONAL INSURANCE COMPANY
21820 BURBANK BLVD., SUITE 330, WOODLAND HILLS, CA 91367 • 818-598-0600 • FAX 318-0380

CALVERT INSURANCE COMPANY
21820 BURBANK BLVD., SUITE 330, WOODLAND HILLS, CA 91367 • 818-598-0600 • FAX 318-0380

ENDORSEMENT # 1	POLICY NUMBER	INSURED:
EFFECTIVE: 12/24/1999	IM 322501	C.B. PATEL AND GOVIND PATEL DBA: HOLIDAY LODGE MOTEL

SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION AND/OR ASBESTOS

Nothing in this endorsement shall limit, modify, waive or make inapplicable to any loss under this form any exclusion contained in the policy except as noted in Paragraph I of this endorsement.

I. Page 1, Item 2, LIMIT OF LIABILITY, of the DECLARATION PAGE is amended by the addition of the following:

- (D) As respects loss or damage caused by or resulting from an insured peril, Seepage and/or Pollution and/or Contamination and/or Asbestos, all as defined below, is covered subject to a Limit of Liability during any one policy year of not exceeding: \$25,000.00 for all above combined and said sum shall be a part of and not in addition to the company's participation set forth in Item 2 (A) above.

II. SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION is defined as:

- (1) any loss, damage, cost or expense, or
- (2) any increase in insured loss, damage, cost or expense, or
- (3) any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by judgment order, direction, instruction or request of, or by any agreement with any court, government agency or any public, civil or military authority, or threat thereof, (and whether or not as a result of public or private litigation),

which arises from any kind of seepage, discharge or release, and/or any kind of pollution and/or contamination, or threat thereof, however caused, whether or not caused by or resulting from a peril insured or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage, discharge or release, and/or any kind of pollution and/or contamination or threat thereof.



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 21820 BURBANK BLVD., SUITE 330, WOODLAND HILLS, CA 91367 • 818-595-0600 • FAX 318-0980

CALVERT INSURANCE COMPANY
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ENDORSEMENT # 1	POLICY NUMBER	INSURED:
EFFECTIVE: 12/24/1999	IM 322501	C.B. PATEL AND GOVIND PATEL DBA: HOLIDAY LODGE MOTEL

The term "any kind of seepage, discharge or release, and/or any kind of pollution and/or contamination, or threat thereof" as used in this Endorsement includes (but is not limited to):

- (1) seepage, discharge or release of, or pollution and/or contamination, or threat thereof by anything, including but not limited to any material designated as a "hazardous substance" by the United States Environmental Protection Agency or as a "hazardous material" by the United States Department of Transportation, or defined as a 'toxic substance' by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous, or deleterious to persons or the environment under any other Federal, State, Provincial, Municipal or other law, ordinance or regulation, whether or not the substance was a product or a waste, and whether or not said product was being used in its intended purpose; and
- (2) the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment, whether or not the substance was a product or a waste, and whether or not said product was being used in its intended purpose.

III. ASBESTOS is defined as any loss or increase in loss caused by or resulting from:

- (1) asbestos material removal, encapsulation, covering, or any manner of control or abatement, unless the asbestos is itself covered under this Policy and is damaged by perils insured against by the Policy.
- (2) demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating asbestos material.
- (3) any governmental direction or request declaring that asbestos material present in or part of or utilized on any undamaged portion of the Insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.
- (4) the presence of asbestos in any building or structure as defined on Page 3, Paragraph 2, Item A of this policy.

Page 2 of 2

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

BROKER/AGENT: CROUSE & ASSOCIATES
 SAN FRANCISCO, CA

ASSOCIATED INTERNATIONAL INSURANCE COMPANY

DATE OF ISSUE: JANUARY 03, 2000

BY _____
 AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IL 09 35 08 98

EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES

This endorsement modifies insurance provided under the following:

**BOILER AND MACHINERY COVERAGE PART
COMMERCIAL CRIME COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY**

A. We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.

1. The failure, malfunction or inadequacy of:

a. Any of the following, whether belonging to any insured or to others:

- (1) Computer hardware, including micro-processors;**
- (2) Computer application software;**
- (3) Computer operating systems and related software;**
- (4) Computer networks;**
- (5) Microprocessors (computer chips) not part of any computer system; or**
- (6) Any other computerized or electronic equipment or components; or**

b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in paragraph A.1.a. of this endorsement;

due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.

2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in paragraph A.1. of this endorsement.

B. If an excluded Cause Of Loss as described in paragraph A. of this endorsement results:

1. In a Covered Cause Of Loss under the Boiler And Machinery Coverage Part, the Commercial Crime Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or

2. Under the Commercial Property Coverage Part:

a. In a "Specified Cause Of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes Of Loss—Special Form; or

b. In a Covered Cause Of Loss under the Causes Of Loss—Basic Form or the Causes Of Loss—Broad Form;

we will pay only for the loss ("loss") or damage caused by such "Specified Cause Of Loss", elevator collision, or Covered Cause Of Loss.

C. We will not pay for repair, replacement or modification of any items in paragraphs A.1.a. and A.1.b. of this endorsement to correct any deficiencies or change any features.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CP 15 57 08 98

**BUSINESS INCOME AND/OR EXTRA EXPENSE
COVERAGE FOR YEAR 2000 COMPUTER-RELATED
AND OTHER ELECTRONIC PROBLEMS**

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM
EXTRA EXPENSE COVERAGE FORM

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement effective	12:01 A.M. standard time	Policy No.
Named Insured		Countersigned by (Authorized Representative)

SCHEDULE*

Described Premises

- A. The provisions of Endorsement IL 09 35 do not apply to the coverage provided under this endorsement.
- B. As used in this endorsement, the word Computer and the term Computer Failure have the following meanings:
 1. Computer means computer hardware, including microprocessors; computer application software; computer operating systems and related software; computer networks; microprocessors (computer chips) not part of any computer system; or any other computerized or electronic equipment or components.
 2. Computer Failure means the failure, malfunction or inadequacy of a Computer due to the inability to correctly recognize, distinguish, interpret or accept the year 2000 and beyond.
- C. If this endorsement is attached to the Business Income (And Extra Expense) Coverage Form, the following apply:
 1. Subject to paragraph 1., this endorsement covers actual loss of Business Income you sustain caused by Computer Failure at the premises described in the Schedule, or at another location if the off-premises Computer interfaces with a Computer at the described premises or is otherwise used in the "operations" of the business at the described premises.
- D. If this endorsement is attached to the Business Income (Without Extra Expense) Coverage Form, the following apply:
 1. Subject to paragraph 1., this endorsement covers actual loss of Business Income you sustain caused by Computer Failure at the premises described in the Schedule, or at another location if the off-premises Computer interfaces with a Computer at the described premises or is otherwise used in the "operations" of the business at the described premises.
- E. Subject to paragraph 1., this endorsement covers the actual and necessary Extra Expense you incur due to Computer Failure at the premises described in the Schedule, or at another location if the off-premises Computer interfaces with a Computer at the described premises or is otherwise used in the "operations" of the business at the described premises. Extra Expense means necessary expenses you incur that you would not have incurred if there had been no Computer Failure. Extra Expense includes expenses for repair, modification or replacement of the Computer but only to the extent that such expenses reduce the amount of Business Income loss that otherwise would have been payable under the provisions of this endorsement.

*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.





☒ ASSOCIATED INTERNATIONAL INSURANCE COMPANY
21620 BURBANK BLVD., SUITE 330 WOODLAND HILLS, CA 91367 • 818 595-0600 • FAX 310-0378

☐ CALVERT INSURANCE COMPANY
TWO HUDSON PLACE, HOBOKEN NJ 07030 • 201-798-9500 • FAX 798-8451

ENDORSEMENT #:	POLICY NUMBER	INSURED:
EFFECTIVE:		

ELECTRONIC DATA PROCESSING EQUIPMENT AND MEDIA

1) ITEM (I) UNDER PARAGRAPH 3, PROPERTY EXCLUDED, ON FORM IM/DICI IS HEREBY DELETED IN ITS ENTIRETY.

2) COVERAGE FOR ELECTRONIC DATA PROCESSING EQUIPMENT AND MEDIA IS HEREBY ADDED AS ITEM F, UNDER PARAGRAPH 2, PROPERTY OR INTEREST COVERED, AS FOLLOWS:

F. ELECTRONIC DATA PROCESSING EQUIPMENT INCLUDING COMPUTERS, ELECTRONIC ACCOUNTING MACHINES, ALL SUPPORTING MACHINERY, MAGNETIC TAPES, DISCS, CARDS, ANY STORAGE DEVICE AND ALL SOFTWARE INCLUDING PROCEDURES, PROGRAMS OR SOURCE MATERIAL OF ANY KIND, BUT ONLY AS SCHEDULED BELOW:

LOCATION(S): 1) 1500 W. 10TH STREET, ANTOCH, CA 94509

EQUIPMENT VALUES: INCLUDED.

MEDIA VALUES: INCLUDED



☒ ASSOCIATED INTERNATIONAL INSURANCE CO. OF NEW YORK
 21000 BURBANK BLVD., SUITE 300, WOODLAND HILLS, CA 91367 • 818-595-0600 • FAX 818-595-0651

☐ CALVERT INSURANCE COMPANY
 TWO HUDSON PLACE, HOBOKEN, NJ 07030 • 201-798-9500 • FAX 201-798-9451

ENDORSEMENT #	POLICY NUMBER	INSURED:
EFFECTIVE		

NO ENTRY REQUIRED ABOVE IF THIS ENDORSEMENT IS PART OF THE ORIGINAL POLICY ISSUANCE.

BUSINESS INTERRUPTION / EXTRA EXPENSE INSURANCE

A. COVERAGE

1. If coverage is shown on the Policy Declaration Page, this policy insures against loss resulting directly from:

- necessary interruption of the Insured's business and the consequent reduction in Gross Earnings, caused by damage to or destruction of real or personal property, except finished stock;
- necessary extra expense, as hereinafter defined, incurred by the Insured in order to continue as nearly as practicable the normal operation and normal Gross Earnings of the Insured's business following damage to or destruction of real or personal property;

by the peril(s) insured against during the term of this policy, which property is on premises situated and occupied by the Insured as described above.

2. In the event of such damage or destruction, this Company shall be liable for:

- the Actual Loss Sustained by the Insured resulting directly from such interruption of business, but not exceeding, the reduction in Gross Earnings less charges and expenses which do not necessarily continue during the interruption of business (hereinafter referred to as "loss of earnings");
- such Necessary Extra Expense Incurred by the Insured;

for only such length of time (hereinafter referred to the "period of restoration") as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property herein described as has been damaged or destroyed, commencing with the date of such damage or destruction and not limited by the date of termination of this policy.

Applicable only to loss of earnings, due consideration shall be given to the continuation of normal charges and expenses, including payroll expense, to the extent necessary to resume operations of the Insured's business with the same quality of service which existed immediately preceding the date of damage or destruction.

3. Resumption of Operations: It is a condition of this Insurance that:

- applicable only to loss of earnings, if the Insured could reduce the loss.

6. Definitions: The following terms wherever used in this policy shall mean:

- a. "Raw Stock" - material in the state in which the Insured receives it for conversion by the Insured into finished stock.
- b. "Stock in Process" - raw stock which has undergone any aging, seasoning, mechanical or other process of manufacture at the location(s) herein described but which has not become finished stock.
- c. "Finished Stock" - stock manufactured or processed by the Insured which in the ordinary course of the Insured's business is ready for packing, shipment or sale.
- d. "Merchandise" - goods kept for sale by the Insured which are not the product(s) of manufacturing operations conducted by the Insured.
- e. "Normal" - the condition that would have existed had no loss occurred.

B. EXTENSION OF COVERAGE

1. Interruption by Civil Authority: This policy is extended to include:

- a. the actual loss sustained by the Insured, resulting directly from loss of earnings as covered hereunder;
 - b. necessary extra expense incurred by the Insured as covered hereunder;
- during the length of time, not exceeding two (2) consecutive weeks, when, as a direct result of damage to or destruction of property by the peril(s) insured against, access to the Insured's premises if covered hereunder is specifically prohibited by order of civil authority.

2. Expenses to Reduce Loss: Applicable only to loss of earnings, this policy also covers such expenses as are necessarily incurred for the purpose of reducing loss under this policy (except expense incurred to extinguish a fire) but in no event shall the aggregate of such expenses exceed the amount by which the loss of earnings otherwise payable under this policy is thereby reduced. (Expense incurred which is in excess of the foregoing limit and which is extra expense is covered subject to the limit of liability specified in Section I, and to all other provisions applying to the extra expense insurance provided hereunder.)

C. LIMITATIONS AND EXCLUSIONS

- 1. Applicable only to loss of earnings, this Company shall not be liable for any increase of loss resulting from the suspension, lapse or cancellation of any lease, license, contract or order unless such suspension, lapse or cancellation results directly from the interruption of business, and then this Company shall be liable for only such loss as affects the Insured's earnings during, and limited to, the period of indemnity covered under this policy.



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ENDORSEMENT #	POLICY NUMBER	INSURED:
EFFECTIVE		

NO ENTRY REQUIRED ABOVE IF THIS ENDORSEMENT IS PART OF THE ORIGINAL POLICY ISSUANCE.

THEFT EXCLUSION

It is hereby understood and agreed that this policy does not insure against theft (including but not limited to burglary and robbery).



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ENDORSEMENT #	POLICY NUMBER	INSURED:
EFFECTIVE		

NO ENTRY REQUIRED ABOVE IF THIS ENDORSEMENT IS PART OF THE ORIGINAL POLICY ISSUANCE.

REPLACEMENT COST

- A. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.
- B. This Optional Coverage does not apply to:
1. Property of others;
 2. Contents of a residence;
 3. Manuscripts;
 4. Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or
 5. "Stock," unless the Including "Stock" option is shown in the Declarations.
- C. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled in an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- D. We will not pay on a replacement cost basis for any loss or damage:
1. Until the lost or damaged property is actually repaired or replaced; and
 2. Unless the repairs or replacement(s) are made as soon as reasonably possible after the loss or damage.
- E. We will not pay more for loss or damage on a replacement cost basis than the least of:
1. The Limit of Insurance applicable to the lost or damaged property;
 2. The cost to replace, on the same premises, the lost or damaged property with other property:
 - a. Of comparable material and quality; and
 - b. Used for the same purpose; or
 3. The amount you actually spend that is necessary to repair or replace the lost or damaged property.



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ENDORSEMENT #	POLICY NUMBER	INSURED:
EFFECTIVE		

NO ENTRY REQUIRED ABOVE IF THIS ENDORSEMENT IS PART OF THE ORIGINAL POLICY ISSUANCE.

MINIMUM EARNED PREMIUM CLAUSE

In the event of cancellation of this policy by the insured, a minimum earned premium of 25% of the annual premium shall become payable by the insured; any conditions of the policy to the contrary notwithstanding. Failure of the insured to make timely payment of premium shall be considered a request by the insured for the company to cancel. In the event of such cancellation by the company for non-payment of premium the minimum premium shall be due and payable; provided, however, such non-payment cancellation shall be rescinded if the insured remits the full premium due within 10 days of receiving the cancellation notice.

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DL GLAZE WC

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ENDORSEMENT #	POLICY NUMBER	INSURED:
EFFECTIVE		

NO ENTRY REQUIRED ABOVE IF THIS ENDORSEMENT IS PART OF THE ORIGINAL POLICY ISSUANCE.

UNDERLYING ALL RISK COVERAGE ENDORSEMENT

It is understood and agreed that the Insured shall maintain underlying all risk coverage from the inception of this policy to expiration, equivalent to Insurance Services Office form(s) CF0013/CP1030, CF0014/CP1030 or their equivalent as approved by the Insurance department of the state where the property is located. All losses hereunder will be adjusted as though such coverage was in effect at the time of loss.

IM/JARC(7/92)
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DECLARATIONS PAGE

ASSOCIATED INTERNATIONAL INSURANCE COMPANY

ITEM 1.

PROPERTY OR INTEREST COVERED - THIS POLICY COVERS PROPERTY AS INDICATED IN ITEMS A, B, C, D, AND E, BELOW AND AS FURTHER DESCRIBED IN SECTION 2 OF THE FORM, BUT NO COVERAGE ATTACHES UNDER ANY ITEM UNLESS AN "X" IS INSERTED ON THE LINE PRECEDING THAT ITEM:

- X ITEM A - ON BUILDING(S) AND/OR STRUCTURE(S)
- ITEM B - ON STOCK, MATERIALS AND SUPPLIES
- X ITEM C - ON FURNITURE, FIXTURES, EQUIPMENT AND MACHINERY
- ITEM D - TENANTS IMPROVEMENTS AND BETTERMENTS
- X ITEM E - BUSINESS INTERRUPTION, EXTRA EXPENSE, RENTAL VALUE OR TIME
ELEMENT COVERAGE PER ATTACHED FORM(S) NO.(S)
IM/BIEE

ITEM 2.

LIMIT OF LIABILITY:

- (A) THE LIMIT OF LIABILITY OF THIS COMPANY IN RESPECT TO EACH AND EVERY LOSS OCCURRENCE SHALL NOT EXCEED:
- \$2,240,000.
- (B) WITH RESPECT TO LOSS OR DAMAGE CAUSED BY OR RESULTING FROM EARTHQUAKE, THE LIMIT OF LIABILITY DURING ANY ONE POLICY YEAR SHALL NOT EXCEED:
- \$2,240,000.
- (C) AS RESPECTS LOSS OR DAMAGE CAUSED BY OR RESULTING FROM FLOOD, THE LIMIT OF LIABILITY DURING ANY ONE POLICY YEAR SHALL NOT EXCEED:
- \$N/A.

ITEM 3.

SCHEDULE OF LOCATIONS:

- (A) 1. 1500 W. 10TH STREET, ANITOCH, CA 94509
- 2.
- 3.
- (B) NIL ON PROPERTY AT ANY OTHER LOCATIONS

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Member Companies:

Associated International
Insurance Company

Calvert Insurance Company

Timberline Insurance Company



ASSOCIATED INTERNATIONAL INSURANCE COMPANY

ITEM 4. DEDUCTIBLE CLAUSE:

THE SUM(S) SHOWN BELOW SHALL BE DEDUCTED FROM THE AMOUNT WHICH WOULD OTHERWISE BE RECOVERABLE FOR EACH LOSS SEPARATELY OCCURRING TO THE PROPERTY COVERED HEREUNDER FROM ALL PERILS INSURED AGAINST BY THIS POLICY:

PROPERTY DAMAGE

EARTHQUAKE: * % OF TOTAL INSURABLE PROPERTY VALUES IN ANY ONE BUILDING SUBJECT TO

\$ * MINIMUM PER OCCURRENCE

FLOOD: * % OF TOTAL INSURABLE PROPERTY VALUES IN ANY ONE BUILDING SUBJECT TO

\$ * MINIMUM PER OCCURRENCE

ALL OTHER PERILS: \$ * PER OCCURRENCE

TIME ELEMENT

BUSINESS INTERRUPTION, GROSS EARNINGS, EARNINGS, RENTS AND/OR EXTRA EXPENSE (PER ATTACHED COVERAGE FORMS): * DAY(S) WAITING PERIOD ON TIME ELEMENT.

PROPERTY IN ANY ONE BUILDING DEFINED

IN THE APPLICATION OF THE DEDUCTIBLE CLAUSE ABOVE EACH OF THE FOLLOWING SHALL BE CONSIDERED A SEPARATE BUILDING:

- A) EACH SEPARATE STRUCTURE INCLUDING THE CONTENTS THEREIN ALL, AS DEFINED IN PARAGRAPH 2, ITEMS A, B, C AND D OF THIS POLICY;
- B) PROPERTY IN EACH YARD;
- C) ALL OTHER COVERAGE FORMS (SEPARATELY) AT EACH LOCATION, WHETHER OR NOT SUCH LOCATION HAS MORE THAN ONE BUILDING AS DEFINED ABOVE.

* SEE ATTACHED FORM IM/DEN-DEDUCTIBLE CLAUSE

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DIC1-2 (08/01/94)

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MR 09 10:57AM D L GLAZE INC



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ENDORSEMENT #:	POLICY NUMBER	INSURED:
EFFECTIVE:		

DEDUCTIBLE ENDORSEMENT

THE SUM(S) SHOWN BELOW SHALL BE DEDUCTED FROM THE AMOUNT WHICH WOULD OTHERWISE BE RECOVERABLE FOR EACH LOSS SEPARATELY OCCURRING TO THE PROPERTY COVERED HEREUNDER FROM ALL PERILS INSURED AGAINST BY THIS POLICY.

PROPERTY DAMAGE

EARTHQUAKE: 7.5 % OF INSURED VALUES PER UNIT SUBJECT TO
 \$25,000. MINIMUM PER OCCURRENCE

FLOOD: N/A% OF INSURED VALUES PER UNIT SUBJECT TO
 \$25,000. MINIMUM PER OCCURRENCE

ALL OTHER PERILS: \$25,000. PER OCCURRENCE

TIME ELEMENT

BUSINESS INTERRUPTION, GROSS EARNINGS, EARNINGS, RENTS AND/OR EXTRA EXPENSE (SEE ATTACHED ENDORSEMENT): 10 (TEN) DAY(S) WAITING PERIOD ON TIME ELEMENT.

UNIT OF INSURANCE DEFINED

IN THE APPLICATION OF THE DEDUCTIBLE CLAUSE MADE A PART OF THIS COVERAGE, EACH OF THE FOLLOWING SHALL BE CONSIDERED A SEPARATE UNIT OF INSURANCE:

- A) EACH SEPARATE BUILDING OR STRUCTURE;
- B) THE CONTENTS OF EACH SEPARATE BUILDING, OR STRUCTURE; AND,
- C) PROPERTY IN EACH YARD;
- D) TIME ELEMENT AT EACH LOCATION WHETHER OR NOT SUCH LOCATION HAS MORE THAN ONE UNIT AS DEFINED IN A, B, AND C ABOVE;
- E) ALL OTHER COVERAGE FORMS (SEPARATELY) AT EACH LOCATION, WHETHER OR NOT SUCH LOCATION HAS MORE THAN ONE UNIT AS DEFINED IN A, B, AND C ABOVE.

IM/DEN(12/92)

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DIFFERENCE IN CONDITIONS FORM

1. **INSURING AGREEMENT** - This policy insures against all risks of direct physical loss or damage from any external cause except as hereinafter excluded, while anywhere within the 50 states of the United States of America and the District of Columbia as more fully set forth in Item 3 of the declarations.

2. **PROPERTY OR INTEREST COVERED** - This policy covers property only as indicated in Item 1 of the declarations and as described below:

ITEM A - On building(s) and/or structure(s) in all parts, including additions and/or extensions in contact therewith (regardless of construction) and on all property belonging to and/or constituting a permanent part of said buildings and/or structures and pertaining to the service, upkeep, maintenance and operation thereof; all which now is or may hereafter during the term of this policy become at the risk of the insured;

ITEM B - On stock, materials and supplies of every description usual or incidental to the operations of the insured including the insured's interest in materials, labor and charges furnished, performed on, or incurred in connection with property of others;

ITEM C - On furniture, fixtures, equipment and machinery being property of the insured, or similar properties of others in the care, custody or control of the insured and for which the insured is liable in event of loss;

ITEM D - On the insured's interest in tenants' improvements and betterments to buildings, being fixtures, alterations, installation or additions comprising part of a building(s) occupied but not owned by the insured and made at the expense of the insured;

ITEM E - Business interruption, extra expense, rental value or other time element coverages as indicated in Item 1 of the declarations.

3. **PROPERTY EXCLUDED:**

- (A) Accounts, bills, deeds, evidences of debt, currency, money, notes, securities, stamps, original drawings and specifications, letters of credit, passports, tickets or valuable papers;
- (B) Animals, growing plants or shrubs (except when held for sale, or when used for decorative purposes inside buildings) growing crops, motor vehicles licensed or designed principally for highway use, watercraft, aircraft, motorcycles, motor scooters and other similar vehicles licensed or designed principally for highway use;

- (C) Property sold by the insured under conditional sales, trust agreements, installment payments or other deferred payment plans after delivery to customers;
- (D) Property in transit;
- (E) Steam boilers, steam pipes, steam turbines, or steam engines owned or operated by the insured against loss by bursting, rupture or explosion of such objects;
- (F) Machines or machinery against loss by rupture, bursting or disintegrating of rotating or moving parts;
- (G) Contractor's equipment;
- (H) Jewelry, watches, pearls, precious and semi-precious stones, gold, silver, platinum, other precious metals or alloys, bullion, furs and articles trimmed with fur;
- (I) Electronic data processing equipment including computers, electronic accounting machines, all supporting machinery, magnetic tapes, discs, cards, any storage device and all software including procedures, programs or source material of any kind;
- (J) Property in the course of construction, including materials and supplies thereof;
- (K) Power transmission and/or feeder lines not on the insured's premises;
- (L) Land (including but not limited to land on which the insured property is located), or water, howsoever and wherever located, or any interest or right therein.

4. PERILS EXCLUDED:

This policy does not insure against the following perils:

- (A) (1) Loss or damage caused by or resulting from fire and lightning as set forth in a standard fire insurance policy, windstorm or hail, smoke, explosion, riot, riot attending a strike or civil commotion, aircraft or vehicle, vandalism and malicious mischief and sprinkler leakage all as more fully defined and limited in the forms approved by the rating bureau having jurisdiction where the property is located; whether or not insurance for such perils is being maintained by the insured at the time of the loss and whether or not such loss or damage is directly or indirectly caused by or contributed to by a peril covered under this policy;
- (2) Loss or damage caused by or resulting from any peril, other than earthquake or flood, that is insured under the policy or policies maintained by the insured as required by the "Underlying All Risk Coverage Endorsement" that is attached to this policy;

- (B) Loss or damage caused by or resulting from water below the surface of the ground including that which exerts pressure on or flows, seeps, or leaks through sidewalks, driveways, foundations, walls, basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors;
- (C) Loss or damage caused by or resulting from the mere disappearance of property or loss or shortage of property disclosed on taking inventory;
- (D) Loss or damage caused by or resulting from wear and tear, mechanical breakdown, derangement, inherent vice, latent defect, gradual deterioration, moth, vermin, rodents, termites or other insects including larvae or pupae thereof;
- (E) Loss or damage caused by or resulting from gas or smoke from agricultural smudging, smog, or industrial operations;
- (F) Loss or damage caused by or resulting from dampness of atmosphere, dryness of atmosphere, extremes or changes of temperature, shrinkage, evaporation, loss of weight, leakage of contents, breakage of glass or similar fragile materials (other than lenses of photographic or scientific instruments), marring, scratching, rust or corrosion, exposure to light, contamination, change in flavor or color or texture or finish;
- (G) Loss or damage caused by or resulting from infidelity of insured's employees or of persons to whom the insured property may be entrusted;
- (H) Loss or damage caused by or resulting from any fraudulent scheme, trick, device or false pretense practiced upon the insured or upon any person(s) to whom the property may be entrusted;
- (I) Loss or damage caused by or resulting from electrical injury or disturbance to electrical appliances, fixtures or wiring caused by electrical currents artificially generated, except with respect to ensuing loss or damage caused by or resulting from a peril not otherwise excluded;
- (J) With regard to real property as set forth in Paragraph 2 - Item A herein:
 - (1) Loss or damage caused by or resulting from normal settling, shrinkage or expansion in foundations, walls, floors, or ceilings, or subsidence. Such loss or damage is excluded regardless of whether any cause or peril other than earthquake contributes concurrently or in any sequence to the loss.
 - (2) Loss or damage caused by or resulting from earth movement. Earth movement includes but is not limited to loss or damage caused by, resulting from, contributed to or aggravated by landslide, mudflow, earth sinking, rising, or shifting, or the eruption, explosion, or effusion of any volcano. This exclusion applies even though the loss or damage is contributed to in any manner by perils other than earthquake which are insured against in this policy;

- (3) Loss or damage caused by or resulting from the negligent act or omission of any person;
- (4) Loss or damage occasioned by enforcement of any ordinance or law regulating the reconstruction, repair or demolition of any real property insured hereunder. This exclusion applies even though the loss or damage is contributed to in any manner by perils which are insured against in this policy;
- (K) Loss or damage caused by or resulting from:
 - (1) Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by any agent of any such government, power, authority or forces;
 - (2) Any weapon of war employing atomic fission or radioactive force whether in time of peace or war;
 - (3) Insurrection, rebellion, revolution, civil war, usurped power or action taken by governmental authority in hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or customs regulation, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade;
- (L) Loss or damage caused by or resulting from nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled and whether such loss be direct or indirect, proximate or remote or be in whole or in part caused by, contributed to, or aggravated by the peril(s) insured against in this policy;
- (M) Loss or damage caused by or resulting from the freezing of plumbing or heating systems in vacant properties;
- (N) Loss or damage caused by or resulting from pilferage, burglary, larceny, theft, or attempted theft if the described property had been vacant beyond a period of thirty (30) consecutive days immediately preceding the loss;
- (O) Loss or damage caused by or resulting from errors in design, errors in processing, faulty workmanship or faulty materials, unless the collapse of the property or a part thereof ensues and then only the ensuing loss;
- (P) Loss or damage to insured property, as set forth in Paragraph 2 herein, while actually being worked upon and directly caused by or resulting therefrom, except ensuing loss from a peril not otherwise excluded by this policy;
- (Q) Loss or damage caused by or resulting from exposure to elements of the weather where any insured personal property is left in the open or not contained in buildings or permanent foundations;

- (R) Loss or damage caused by or resulting from delay, loss of market, loss of use, interruption of business, consequential loss of any nature, unless specifically insured under Paragraph 2, Item E.
- (S) Any loss or any increase in loss caused by or resulting from any of the following:
- (1) Acts or decisions, including the failure to act or decide of any person, organization or governmental body:
 - (2) Faulty, inadequate or defective:
 - (a) Planning, zoning, development, surveying, siting;
 - (b) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (c) Materials used in repair, construction, renovation, or remodeling, or
 - (d) Maintenance

on part of all or all of any property on or off the described insured premises.

(T) SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION

This Policy does not insure against:

- (1) any loss, damage, cost or expense, or
- (2) any increase in insured loss, damage, cost or expense, or
- (3) any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by judgment order, direction, instruction or request of, or by any agreement with any court, government agency or any public, civil or military authority, or threat thereof, (and whether or not as a result of public or private litigation),

which arises from any kind of seepage, discharge or release, and/or any kind of pollution and/or contamination, or threat thereof, however caused, whether or not caused by or resulting from a peril insured or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage, discharge or release, and/or any kind of pollution and/or contamination or threat thereof.

The term "any kind of seepage, discharge or release, and/or any kind of pollution and/or contamination, or threat thereof" as used in this Endorsement includes (but is not limited to):

- (1) seepage, discharge or release of, or pollution and/or contamination, or threat thereof by anything, including but not

limited to any material designated as a "hazardous substance" by the United States Environmental Protection Agency or as a "hazardous material" by the United States Department of Transportation, or defined as a 'toxic substance' by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous, or deleterious to persons or the environment under any other Federal, State, Provincial, Municipal or other law, ordinance or regulation, whether or not the substance was a product or a waste, and whether or not said product was being used in its intended purpose; and

- (2) the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment, whether or not the substance was a product or a waste, and whether or not said product was being used in its intended purpose.

(U) ASBESTOS EXCLUSION

This policy does not insure against any loss or increase in loss caused by or resulting from:

- (1) asbestos material removal, encapsulation, covering, or any manner of control or abatement, unless the asbestos is itself covered under this Policy and is damaged by perils insured against by this Policy.
- (2) demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating asbestos material.
- (3) any governmental direction or request declaring that asbestos material present in or part of or utilized on any undamaged portion of the insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.
- (4) the presence of asbestos in any building or structure as defined in Paragraph 2, Item A of this policy.

5. **OTHER INSURANCE** - If a loss covered by this policy is also covered by other insurance, the coverage afforded by this policy shall be excess to the coverage afforded by such other insurance.

6. **SINGLE LOSS CLAUSE** - Each loss by earthquake shall constitute a single claim hereunder; provided, if more than one earthquake shock shall occur within any period of seventy-two hours during the term of this policy, such earthquake shocks shall be deemed to be a single earthquake within the meaning hereof. This company shall not be liable for any loss caused by any earthquake shock occurring before the effective date and time of this policy, nor for any loss occurring after the expiration date and time of this policy.

In no event shall this company be liable for any loss caused directly or indirectly by fire, explosion or other excluded perils whether the same be caused by or attributable to earthquake or otherwise.

7. **SUBROGATION WAIVER** - This insurance shall not be prejudiced by agreement made by the named insured releasing or waiving the named insured's right to recovery against third parties responsible for the loss, under the following circumstances only: (1) if made before loss has occurred, such agreement may run in favor of any third party; (2) if made after loss has occurred, such agreement may run only in favor of a third party falling within one of the following categories at the time of loss: (a) a third party insured under this policy or (b) a corporation, firm, or entity (1) owned or controlled by the named insured or in which the named insured owns capital stock or other proprietary interest or (2) owning or controlling the named insured or owning or controlling capital stock or other proprietary interest in the named insured; (3) whether made before or after loss has occurred, such agreement must release or waive the entire right of recovery of the named insured against such third party.
8. **LOSS CLAUSE** - Any loss hereunder shall not reduce the amount of this policy except as respects earthquake and flood as per Item 2 of the declarations.
9. **MISREPRESENTATION AND FRAUD** - This entire policy shall be void if, whether before or after a loss, the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.
10. **NOTICE OF LOSS** - The insured shall as soon as practicable report in writing to the company or its agent every loss, damage or occurrence which may give rise to a claim under this policy and shall also file with the company or its agent within ninety (90) days from date of discovery of such loss, damage or occurrence, a detailed sworn proof of loss.
11. **EXAMINATION UNDER OATH** - The insured, as often as may be reasonably required, shall exhibit to any person designated by the company all that remains of any property herein described, and shall submit, and in so far as is within his or their power cause his or their employees, members of the household and others to submit to examinations under oath by any person named by the company and subscribe the same; and, as often as may be reasonably required, shall produce for examination all writings, books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the company or its representative, and shall permit extracts and copies thereof to be made. No such examinations under oath or examination of books or documents, nor any other act of the company or any of its employees or representatives in connection with the investigation of any loss or claim hereunder, shall be deemed a waiver of any defense which the company might otherwise have with respect to any loss or claim, but all such examinations and acts shall be deemed to have been made or done without prejudice to the company's liability.

12. **PRIVILEGE TO ADJUST WITH OWNER** - In the event of loss of or damage to property of others held by the insured for which claim is made upon the company, the right to adjust such loss or damage with the owner or owners of the property is reserved to the company and the receipt of such owner or owners in satisfaction thereof shall be in full satisfaction of any claim of the insured for which such payment has been made. If legal proceedings be taken to enforce a claim against the insured as respects any such loss or damage, the company reserves the right at this option without expense to the insured, to conduct and control the defense on behalf of and in the name of the insured. No action of the company in such regard shall increase the liability of the company under this policy, nor increase the limits of liability specified in the policy.
13. **SETTLEMENT OF LOSS** - All adjusted claims shall be paid or made good to the insured within sixty (60) days after presentation and acceptance of satisfactory proof of interest and loss at the office of the company. No loss shall be paid or made good if the insured has collected the same from others.
14. **NO BENEFIT TO BAILEE** - This insurance shall in no way inure directly or indirectly to the benefit of any carrier or other bailee.
15. **PAIR, SET OR PARTS** - In the event of loss of or damage to:
 - (A) Any article or articles which are a part of a pair or set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set; or
 - (B) Any part of property covered consisting, when complete for use or sale, of several parts, the company shall only be liable for the value of the part lost or damaged.
16. **RECORDS AND INVENTORY** - The insured shall keep accurate books, records and accounts in the following manner: a detailed and itemized inventory record of all property covered hereunder shall be maintained and physical inventory shall be taken periodically at intervals not more than twelve months apart.
17. **EXAMINATION OF RECORDS** - The insured shall, as often as may be reasonably required during the term of this policy and for one year thereafter, produce for examination by the company or its duly authorized representative all the books and records, inventories and accounts relating to the property covered hereunder.
18. **SUIT** - No suit, action or proceeding for the recovery of any claim under this policy shall be sustainable in any court of law or equity unless the same be commenced within twelve (12) months next after discovery by the insured of the occurrence which gives rise to the claim, provided however, that if by the laws of the state within which this policy is issued such limitation is invalid, then any such claims shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted by the laws of such state.

19. **APPRAISAL** - If the insured and the company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty (60) days after receipt of proof of loss by the company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen (15) days to agree upon such umpire, then, on the request of the insured or the company, such umpire shall be selected by a judge of a court of record in the state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The company shall not be held to have waived any of its rights by any act relating to appraisal.
20. **COMPANY'S OPTIONS** - It shall be optional with the company to take all or any part of the property at the agreed or appraised value, or to repair, rebuild or replace the property destroyed or damaged, with other of like kind and quality within a reasonable time, on giving notice of its intention to do so within sixty (60) days after the receipt of the proof of loss herein required.
21. **ABANDONMENT** - There can be no abandonment to the company of any property.
22. **CLAIMS AGAINST THIRD PARTIES** - In the event of any loss of or damage to the property covered hereunder, the insured shall immediately make claim in writing against the carrier(s), bailee(s) or others involved.
23. **LABELS** - In the event of loss of or damage to labels, capsules or wrappers, the loss shall be adjusted on the basis of an amount sufficient to pay the cost of new labels, capsules or wrappers.
24. **ASSISTANCE AND COOPERATION OF THE INSURED** - In the event this policy covers the insured's liability, the insured shall cooperate with the company and upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, the insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense without the written consent of the company.
25. **SUE AND LABOR** - In case of actual (or imminent, with proper notice to and approval from this company) loss or damage, it shall be lawful and necessary for the insured, their factors, servants or assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof, without prejudice to this insurance, nor shall the acts of the insured or this company in recovering, saving and preserving the property insured in case of loss or damage, be considered a waiver or acceptance of abandonment; to the charges thereof, this company will contribute according to the rate and quantity of the sum therein insured.

26. DEBRIS REMOVAL:

- (A) This policy covers ordinary and reasonable expenses incurred in the removal of any debris of the damaged or destroyed property covered hereunder which may be occasioned by direct physical loss or damage caused by, or resulting from any of the perils insured against by this policy, subject however, to the limit of liability, provided however, that notice of said loss or damage to the property covered by this policy shall be given to the Company no later than twelve (12) months after the date of said physical loss or damage.
- (B) This company shall not be liable under this policy and this clause for:
- (1) More than the amount of insurance provided in this policy;
 - (2) Any greater proportion of such expense than the amount of insurance hereunder, bears to the total amount of all insurance, whether all such insurance contains this clause or not; nor
 - (3) Loss or damage occasioned by the enforcement of any state or municipal law or ordinance which necessitates the demolition of any portion of the building covered hereunder, which has not suffered damage by any of the perils insured against in this policy unless such liability is otherwise specifically insured by this policy;
 - (4) The costs of decontamination or removal of water, soil or any other uninsured substance on or under any property covered by this policy.
- (C) If this policy is divided into two or more items, the foregoing shall apply separately to each such item.

27. CANCELLATION - This policy may be cancelled by the insured by mailing to the company written notice stating when thereafter, such cancellation shall be effective. This policy may be cancelled by the company by mailing to the insured at the address shown in this policy or last known address written notice stating when not less than thirty (30) days thereafter, such cancellation shall be effective; however, cancellation due to non-payment of premium shall require ten (10) days written notice of cancellation. The mailing of notice as aforementioned, shall be sufficient proof of notice and the effective date of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the insured or by the company shall be equivalent to mailing.

28. ALL OTHER MATTERS - All matters not provided for herein or by endorsement hereon shall be governed by the terms and conditions of the company's printed policy form to which this form is attached and which has been issued in conjunction herewith. The foregoing clauses shall, however, be considered to supersede and annul any clauses therein, which may be of the same or similar nature.

29. **STATUTORY REQUIREMENTS** - It is hereby understood and agreed that if property covered under this policy is located in a state that requires a statutory policy or standard form(s) at variance with this policy or the form(s) attached hereto, then this insurance shall cover such property in accordance with the provisions of such required policy or form(s).
30. **VALUATION** - This company shall not be liable for more than the actual cash value of the property at the time any loss or damage occurs and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost to repair or replace the same with material of like kind and quality, nor the amount for which the insured may be liable.
31. **DEFINITION OF FLOOD** - Wherever in this policy the term "flood" occurs, it shall be held to mean a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of inland or tidal waters, (2) the unusual and rapid accumulation or runoff of surface waters from any source or spray from any of the foregoing, (3) mudslides which are caused or precipitated by accumulations of water on or under the ground; all whether driven by wind or not.
32. **EXCESS INSURANCE** - Permission is granted the insured to have excess insurance over the limit of liability set forth in this policy without prejudice to this policy and the existence of such insurance, if any, shall not reduce any liability under this policy.
33. **SALVAGE AND RECOVERIES** - All salvage, recoveries and payments recovered or received subsequent to a loss settlement under this policy shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made by the parties hereto.
34. **INSPECTION OF PROPERTY AND OPERATIONS** - This company and any person or organization making inspections on the company's behalf shall be permitted but not obligated to inspect the insured's property and operations at any time. Neither the right of this company and any person or organization to make such inspection nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

Z 237 616 443

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
City of Antioch	
Street & Number	
Office of City Clerk	
Post Office, State, & ZIP Code	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, April 1995

August 11, 2000

C&W
CUMMINS & WHITE, LLP
L A W Y E R S

2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0757
TEL 949-852-1800
FAX 949-852-8510
E-MAIL cw@cwlawyers.com

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

City of Antioch
Office of City Clerk
Third & "H" Street
P.O. Box 5007
Antioch, CA 94531-5007

Associated v. City of Antioch

Insured : Holiday Lodge Motel
Policy No. : IM322501
Claim No. : 72156SS
Date of Loss : 02/23/2000
Our File No. : N688

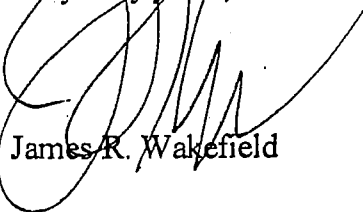
Dear Madam or Sir:

You were previously served with a claim dated March 17, 2000, on behalf of Essex Insurance Company and its policyholder, the Holiday Lodge Hotel, arising out of an incident which occurred on February 23, 2000, in which flood waters from Antioch Creek damaged the Holiday Lodge Motel, located at 1500 West 10th Street, Antioch, California. On May 25, 2000, you served a notice of rejection of said claim.

Enclosed please find a claim against the City of Antioch on behalf of Associated International Insurance Company ("Associated") and its insured C.B. Patel and Govind Patel dba: Holiday Lodge Motel ("Holiday"). This claim is made in order to preserve Associated's and Holiday's rights in this action, as these parties have not served a claim for damages arising from this incident.

Thank you for your attention in this regard, and please do not hesitate to contact our office if you have any questions or require additional information.

Very truly yours,



James R. Wakefield
JRW:jw
Enclosure
|N688|137807.WPD|

1 CUMMINS & WHITE, LLP
2 JAMES R. WAKEFIELD, BAR NO. 102024
3 2424 S.E. Bristol Street, Suite 300
4 Newport Beach, CA 92660-0757
5 (949) 852-1800

6 Attorneys for Claimant
7 ASSOCIATED INTERNATIONAL INSURANCE
8 COMPANY

9 IN THE MATTER OF THE CLAIM
10 AGAINST THE CITY OF ANTIOCH

11 Claim of ASSOCIATED INTERNATIONAL
12 INSURANCE COMPANY and C.B. PATEL
13 AND GOVIND PATEL DBA: HOLIDAY
14 LODGE MOTEL

15 ClaimantS,

16 vs.

17 CITY OF ANTIOCH,

18 Respondent.

19 CLAIM FOR PROPERTY DAMAGE
20 AND ECONOMIC LOSS [GOVT.
21 CODE §910]

22 TO THE CITY OF ANTIOCH:

23 You are hereby notified that Associated International Insurance Company, whose address
24 is c/o James R. Wakefield, Cummins & White, LLP, 2424 S. E. Bristol Street, Suite 300, Newport
25 Beach, California 92660-0757 claims damages from the City of ANTIOCH.

26 I.

27 BASIS OF CLAIM

28 This claim is based upon damages sustained by ASSOCIATED INTERNATIONAL
INSURANCE COMPANY (ASSOCIATED) and its insured C.B. PATEL AND GOVIND PATEL
DBA: HOLIDAY LODGE MOTEL (HOLIDAY) as a result of damage sustained on or about
February 23, 2000 due to rapidly rising flood waters which inundated from the West Antioch Creek

1 at the 10th Street crossing and down stream through the local Ford Dealership. The Flood Control
2 location is inadequate to convey the runoff and that runoff inundated thirty units at HOLIDAY.
3 HOLIDAY suffered significant property damage and loss of income. Some of that loss was insured
4 by ASSOCIATED and paid by ASSOCIATED. Therefore ASSOCIATED is subrogated to the
5 rights of its insured HOLIDAY. We believe the runoff and damage occurred due to the negligence
6 of the City or its employees or agents.

7 II

8 BASIS OF LIABILITY

9 Claimant contends that the City of Antioch was negligent in the construction and/or
10 maintenance of the flood control instrumentalities and channels. They consitituted a dangerous
11 condition on public property of which the City of Antioch had notice and that the City of Antioch
12 failed to warn of the dangerous condition.

13 III.

14 RESPONSIBLE PUBLIC EMPLOYEE

15 The names of the public employees causing claimant's injuries are not currently known to
16 claimant.

17 IV.

18 DAMAGES AND JURISDICTION

19 The injuries sustained by the Claimants, as far as known at the date of presentation of this
20 claim, include permanent quadriplegia and brain damage. Claimant's damages exceed \$10,000.00
21 and jurisdiction over this claim rests in the Superior Court of the State of California.

22 //

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V.

FURTHER NOTICE

All notices or other communications regarding this claim may be sent to James R. Wakefield,
Cummins & White, LLP, 2424 S.E. Bristol Street, Suite 300, Newport Beach, California 92660-
0757.

DATED: August 11, 2000

CUMMINS & WHITE, LLP

By:

James R. Wakefield
Attorneys for Claimant
ASSOCIATED INTERNATIONAL
INSURANCE COMPANY

Z 237 616 442

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
County of Contra Costa	
Street & Number	
Clerk of Board of Supervisors	
Post Office, State, & ZIP Code	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, April 1995

C&W
CUMMINS & WHITE, LLP
L A W Y E R S

2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0757
TEL 949-852-1800
FAX 949-852-8510
E-MAIL cw@cwlawyers.com

August 11, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

County of Contra Costa
Clerk of the Board of Supervisors
651 Pine Street, Room 106
Martinez, CA 94553

Associated v. City of Antioch
Insured : Holiday Lodge Motel
Policy No. : IM322501
Claim No. : 72156SS
Date of Loss : 02/23/2000
Our File No. : N688

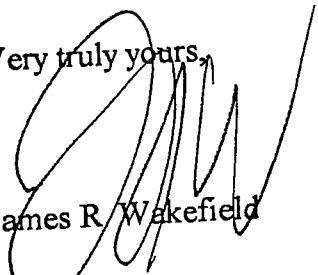
Dear Madam or Sir:

You were previously served with a claim dated March 17, 2000, on behalf of Essex Insurance Company and its policyholder, the Holiday Lodge Hotel, arising out of an incident which occurred on February 23, 2000, in which flood waters from Antioch Creek damaged the Holiday Lodge Motel, located at 1500 West 10th Street, Antioch, California. On May 3, 2000, you served a notice of rejection of said claim.

Enclosed please find a claim against the County of Contra Costa on behalf of Associated International Insurance Company ("Associated") and its insured C.B. Patel and Govind Patel dba: Holiday Lodge Motel ("Holiday"). This claim is made in order to preserve Associated's and Holiday's rights in this action, as these parties have not served a claim for damages arising from this incident.

Thank you for your attention in this regard, and please do not hesitate to contact our office if you have any questions or require additional information.

Very truly yours,


James R. Wakefield

JRW:jw
Enclosure

|N688|137810.WPD|

CUMMINS & WHITE, LLP
JAMES R. WAKEFIELD, BAR NO. 102024
2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0757
(949) 852-1800

Attorneys for Claimant
ASSOCIATED INTERNATIONAL INSURANCE
COMPANY

IN THE MATTER OF THE CLAIM
AGAINST THE COUNTY OF CONTRA COSTA

Claim of ASSOCIATED INTERNATIONAL
INSURANCE COMPANY and C.B. PATEL
AND GOVIND PATEL DBA: HOLIDAY
LODGE MOTEL

ClaimantS,

vs.

COUNTY OF CONTRA COSTA,

Respondent.

CLAIM FOR PROPERTY DAMAGE
AND ECONOMIC LOSS [GOVT.
CODE §910]

TO THE COUNTY OF CONTRA COSTA:

You are hereby notified that Associated International Insurance Company, whose address is c/o James R. Wakefield, Cummins & White, LLP, 2424 S. E. Bristol Street, Suite 300, Newport Beach, California 92660-0757 claims damages from COUNTY OF CONTRA COSTA.

I.

BASIS OF CLAIM

This claim is based upon damages sustained by ASSOCIATED INTERNATIONAL INSURANCE COMPANY (ASSOCIATED) and its insured C.B. PATEL AND GOVIND PATEL DBA: HOLIDAY LODGE MOTEL (HOLIDAY) as a result of damage sustained on or about February 23, 2000 due to rapidly rising flood waters which inundated from the West Antiooch Creek

1 at the 10th Street crossing and down stream through the local Ford Dealership. The Flood Control
2 dislocation is inadequate to convey the runoff and that runoff inundated thirty units at HOLIDAY.
3 HOLIDAY suffered significant property damage and loss of income. Some of that loss was insured
4 by ASSOCIATED and paid by ASSOCIATED. Therefore ASSOCIATED is subrogated to the
5 rights of its insured HOLIDAY. We believe the runoff and damage occurred due to the negligence
6 of the County or its employees or agents.

7 II

8 BASIS OF LIABILITY

9 Claimant contends that the COUNTY OF CONTRA COSTA was negligent in the
10 construction and/or maintenance of the flood control instrumentalities and channels. They
11 constituted a dangerous condition on public property of which the COUNTY OF CONTRA
12 COSTA had notice and that the COUNTY OF CONTRA COSTA failed to warn of the dangerous
13 condition.

14 III.

15 RESPONSIBLE PUBLIC EMPLOYEE

16 The names of the public employees causing claimant's injuries are not currently known to
17 claimant.

18 IV.

19 DAMAGES AND JURISDICTION

20 The injuries sustained by the Claimants, as far as known at the date of presentation of this
21 claim, include permanent quadriplegia and brain damage. Claimant's damages exceed \$10,000.00
22 and jurisdiction over this claim rests in the Superior Court of the State of California.

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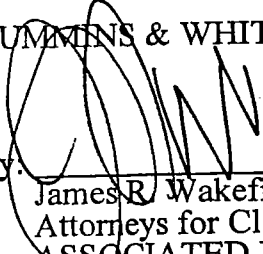
V.

FURTHER NOTICE

All notices or other communications regarding this claim may be sent to James R. Wakefield, Cummins & White, LLP, 2424 S.E. Bristol Street, Suite 300, Newport Beach, California 92660-0757.

DATED: August 11 2000

CUMMINS & WHITE, LLP

By: 
James R. Wakefield
Attorneys for Claimant
ASSOCIATED INTERNATIONAL
INSURANCE COMPANY

Z 237 616 441

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to <i>Contra Costa County</i>	
Street & Number <i>Flood Control</i>	
Post Office, State, & ZIP Code	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, April 1995

August 11, 2000

C&W
CUMMINS & WHITE, LLP
L A W Y E R S

2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0757
TEL 949-852-1800
FAX 949-852-8510
E-MAIL cw@cwlawyers.com

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Contra Costa County Flood Control
255 Glacier Drive
Martinez, CA 94553-4897

Associated v. City of Antioch

Insured : Holiday Lodge Motel
Policy No. : IM322501
Claim No. : 72156SS
Date of Loss : 02/23/2000
Our File No. : N688

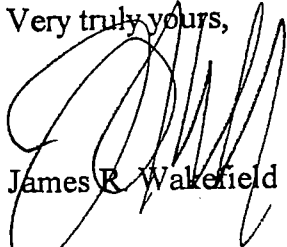
Dear Madam or Sir:

You were previously served with a claim dated March 17, 2000, on behalf of Essex Insurance Company and its policyholder, the Holiday Lodge Hotel, arising out of an incident which occurred on February 23, 2000, in which flood waters from Antioch Creek damaged the Holiday Lodge Motel, located at 1500 West 10th Street, Antioch, California. On May 3, 2000, you served a notice of rejection of said claim.

Enclosed please find a claim against the County of Contra Costa on behalf of Associated International Insurance Company ("Associated") and its insured C.B. Patel and Govind Patel dba: Holiday Lodge Motel ("Holiday"). This claim is made in order to preserve Associated's and Holiday's rights in this action, as these parties have not served a claim for damages arising from this incident.

Thank you for your attention in this regard, and please do not hesitate to contact our office if you have any questions or require additional information.

Very truly yours,



James R. Wakefield

JRW:jw
Enclosure

|N688|137811.WPD|

1 CUMMINS & WHITE, LLP
JAMES R. WAKEFIELD, BAR NO. 102024
2 2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0757
3 (949) 852-1800

4
5 Attorneys for Claimant
ASSOCIATED INTERNATIONAL INSURANCE
6 COMPANY

7
8 IN THE MATTER OF THE CLAIM
9 AGAINST THE CONTRA COSTA COUNTY FLOOD CONTROL

10
11 Claim of ASSOCIATED INTERNATIONAL
INSURANCE COMPANY and C.B. PATEL
12 AND GOVIND PATEL DBA: HOLIDAY
LODGE MOTEL

13 ClaimantS,

14 vs.

15 CONTRA COSTA COUNTY FLOOD
16 CONTROL,

17 Respondent.

CLAIM FOR PROPERTY DAMAGE
AND ECONOMIC LOSS [GOVT.
CODE §910]

18
19 TO THE CONTRA COSTA COUNTY FLOOD CONTROL:

20 You are hereby notified that Associated International Insurance Company, whose address
21 is c/o James R. Wakefield, Cummins & White, LLP, 2424 S. E. Bristol Street, Suite 300, Newport
22 Beach, California 92660-0757 claims damages from CONTRA COSTA COUNTY FLOOD
23 CONTROL.

24 I.

25 BASIS OF CLAIM

26 This claim is based upon damages sustained by ASSOCIATED INTERNATIONAL
27 INSURANCE COMPANY (ASSOCIATED) and its insured C.B. PATEL AND GOVIND PATEL
28 DBA: HOLIDAY LODGE MOTEL (HOLIDAY) as a result of damage sustained on or about

1 February 23, 2000 due to rapidly rising flood waters which inundated from the West Antioch Creek
2 at the 10th Street crossing and down stream through the local Ford Dealership. The Flood Control
3 dislocation is inadequate to convey the runoff and that runoff inundated thirty units at HOLIDAY.
4 HOLIDAY suffered significant property damage and loss of income. Some of that loss was insured
5 by ASSOCIATED and paid by ASSOCIATED. Therefore ASSOCIATED is subrogated to the
6 rights of its insured HOLIDAY. We believe the runoff and damage occurred due to the negligence
7 of the County or its employees or agents.

8 II

9 BASIS OF LIABILITY

10 Claimant contends that the CONTRA COSTA COUNTY FLOOD CONTROL was negligent
11 in the construction and/or maintenance of the flood control instrumentalities and channels. They
12 constituted a dangerous condition on public property of which the CONTRA COSTA COUNTY
13 FLOOD CONTROL had notice and that the CONTRA COSTA COUNTY FLOOD CONTROL
14 failed to warn of the dangerous condition.

15 III.

16 RESPONSIBLE PUBLIC EMPLOYEE

17 The names of the public employees causing claimant's injuries are not currently known to
18 claimant.

19 IV.

20 DAMAGES AND JURISDICTION

21 The injuries sustained by the Claimants, as far as known at the date of presentation of this
22 claim, include permanent quadriplegia and brain damage. Claimant's damages exceed \$10,000.00
23 and jurisdiction over this claim rests in the Superior Court of the State of California.

24 //

25 //

26 //

27 //

28 //

V.

FURTHER NOTICE

All notices or other communications regarding this claim may be sent to James R. Wakefield, Cummins & White, LLP, 2424 S.E. Bristol Street, Suite 300, Newport Beach, California 92660-0757.

DATED: August 11, 2000

CUMMINS & WHITE, LLP

By: 

James R. Wakefield
Attorneys for Claimant
ASSOCIATED INTERNATIONAL
INSURANCE COMPANY

4
CLAIM
BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA

BOARD ACTION: SEPTEMBER 19, 2000

Claim Against the County, or District Governed by)
the Board of Supervisors, Routing Endorsements,)
and Board Action. All Section references are to)
California Government Codes.)

NOTICE TO CLAIMANT

The copy of this document mailed to you is your notice of the action taken on your claim by the Board of Supervisors. (Paragraph IV below), given pursuant to Government Code Section 913 and 915.4. Please note all "Warnings".

RECEIVED

AUG 15 2000

AMOUNT: Exceeding \$10,000.00

COUNTY COUNSEL
MARTINEZ CALIF.

CLAIMANT: Associated International Insurance Company
and C.B. Patel and Govind Patel DBA: Holiday Lodge Motel

ATTORNEY: c/o CUMMINS & WHITE, LLP DATE RECEIVED: AUGUST 14, 2000
JAMES R. WAKEFIELD, BAR NO. 102024

ADDRESS: 2424 S. E. BRISTOL ST., STE300 BY DELIVERY TO CLERK ON: AUGUST 14, 2000
NEWPORT BEACH CA 92660-0757

BY MAIL POSTMARKED: AUGUST 11, 2000

I. FROM: Clerk of the Board of Supervisors **TO:** County Counsel
Attached is a copy of the above-noted claim.

Dated: AUGUST 14, 2000 By: Deputy PHIL BATCHELOR, Clerk
Jean Stalley

II. FROM: County Counsel **TO:** Clerk of the Board of Supervisors

(☒) This claim complies substantially with Sections 910 and 910.2.

() This claim FAILS to comply substantially with Sections 910 and 910.2, and we are so notifying claimant. The Board cannot act for 15 days (Section 910.8).

() Claim is not timely filed. The Clerk should return claim on ground that it was filed late and send warning of claimant's right to apply for leave to present a late claim (Section 911.3).

() Other: _____

4
CLAIM
BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA

BOARD ACTION: SEPTEMBER 19, 2000

Claim Against the County, or District Governed by)
the Board of Supervisors, Routing Endorsements,)
and Board Action. All Section references are to)
California Government Codes.)

RECEIVED

AUG 15 2000

AMOUNT: Exceeding \$10,000.00

COUNTY COUNSEL
MARTINEZ CALIF.

CLAIMANT: Associated International Insurance Company
and C.B. Patel and Govind Patel DBA: Holiday Lodge Motel

ATTORNEY: c/o CUMMINS & WHITE, LLP DATE RECEIVED: AUGUST 14, 2000
JAMES R. WAKEFIELD, BAR NO. 102024

ADDRESS: 2424 S. E. BRISTOL ST., STE300 BY DELIVERY TO CLERK ON: AUGUST 14, 2000
NEWPORT BEACH CA 92660-0757

BY MAIL POSTMARKED: AUGUST 11, 2000

I. FROM: Clerk of the Board of Supervisors TO: County Counsel
Attached is a copy of the above-noted claim.

Dated: AUGUST 14, 2000 By: Deputy PHIL BATCHELOR, Clerk
Jean Stalley

II. FROM: County Counsel TO: Clerk of the Board of Supervisors

- (☒) This claim complies substantially with Sections 910 and 910.2.
- () This claim FAILS to comply substantially with Sections 910 and 910.2, and we are so notifying claimant. The Board cannot act for 15 days (Section 910.8).
- () Claim is not timely filed. The Clerk should return claim on ground that it was filed late and send warning of claimant's right to apply for leave to present a late claim (Section 911.3).
- () Other: _____



CONTRA COSTA COUNTY
MUNICIPAL RISK MANAGEMENT INSURANCE AUTHORITY
1911 SAN MIGUEL DRIVE • SUITE 200 • WALNUT CREEK, CA 94596-5332
(925) 943-1100 • FAX (925) 946-4183



September 22, 2000

Mr. Bill Galstan
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

RECEIVED
SEP 25 2000

CITY OF ANTIOCH
CITY ATTORNEY

RE: CLAIMANT: Associated International Insurance and
its insured C. B. Patel and Govind Patel,
dba Holiday Lodge Motel
CLAIM NO: GL-000573
OUR PRINCIPAL: City of Antioch
DATE OF LOSS: 2/23/00

Dear Galstan:

This letter is my initial report concerning this claim.

REQUEST FOR CITY ACTION:

1. Please issue a notice of rejection of this claim and forward a copy for my records.
2. Please have Sal Romo provide a detailed map of the subject area clearly delineating the flood plain.

COMMENTS:

This is the second claim which has been asserted for the loss that occurred at the Holiday Lodge Motel on February 23, 2000. The first claim was by Essex Insurance Company. The facts are the same. For further information, I refer you to my letter of April 26, 2000 and Phil Harrington's letter of June 6, 2000.

RECENT ACTIVITIES:

I have obtained details of the maintenance by City workers of the flood channel during 1999. The Department of Fish and Game prohibits any activity between October and April of any given year. The following are the 1999 maintenance activities:

May 18, 1999

- A. Desilting of the creek crossings at the west side of the Contra Costa Fairgrounds to most southerly bridges.
- B. Desilting of the Markley Creek Crossing at Mahogany Drive.
- C. Desilting of the West Antioch Creek Crossing at Al Aemes Ford on 10th Street.



May 19, 1999

- A. Desilting the Markley Creek Crossing north of Sycamore Drive.
- B. Continued desilting of the Markley Creek Crossing at Mahogany Drive.
- C. Desilting of the West Antioch Creek Crossing at Highway 4 exit tunnel.

June 4, 1999

- A. Desilting of the West Antioch Creek Crossing at the L Street on-ramp.
- B. Desilting of the Markley Creek Crossing at Sycamore Drive.

June 11, 1999

- A. Desilting of the Markley Creek Crossing further north of the site desilted on May 19, 1999 north of Sycamore Drive at the railroad track crossing.

On September 13, 2000, I met with Sal Romo who took me for a ride of the flood areas. He pointed out the fairground areas and West 10th Street adjacent to them which are historically flooded out. The Holiday Lodge Motel is across the street from this area. Behind the Holiday Lodge Motel is a detention area for the continuation of the flood channel. Separating the detention area from the motel is a dirt berm which was constructed by the City to prevent the detention area from flooding the motel.

At the time of the flood on February 23, 2000, the motel had a very small drainage pipe through the berm to allow water to escape to the rear. Since then, the motel has constructed a wide diameter pipe in a range of one to two feet through the berm for water to escape.

It was noted that the motel floors are elevated approximately three to four inches and so are the entrance doors to each unit. Clearly, the motel owners knew that the motel was situated in a flood plain.

CLAIMANT DATA:

Name: Associated International Insurance Company

In Care of: James R. Wakefield
Cummins and White, LLP

Street: 2424 Southeast Bristol Street, Suite 300

City: Newport Beach, CA 92660-0757



DAMAGES:

Although unclear, it is alleged that the Holiday Lodge sustained significant property damage and loss of income. Some of that loss was insured by Associated International Insurance Company. The claim is on behalf of Associated International Insurance Company and its insured C. B. Patel and Govind Patel, dba Holiday Lodge Motel.

RESERVES:

Precautionary reserves remain at \$20,000 for indemnity.

Sincerely,

Anthony S. Allenza

Anthony S. Allenza
Liability Claims Adjuster

ASA:sep

LETTER OF TRANSMITTAL

TO: Contra Costa County
Municipal Risk Management
Insurance Authority
1911 San Miguel Drive, Suite 200
Walnut Creek, CA 94596

Date: August 21, 2000

Attention: Tony Allenza

FROM: William R. Galstan
City Attorney
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

REGARDING CLAIMANT: Associated International Insurance Co.

C.B. Patel and Govind Patel
(Holiday Lodge Motel)

Your file #GL-000573

WE ARE SENDING YOU ORIGINALS x PHOTOCOPIES OF

 x NEW CLAIM

 INTERNAL CLAIMS MEMORANDUM

 POLICE REPORT

 SUMMONS AND COMPLAINT

 DENIAL LETTER

 AS REQUESTED

 OTHER: _____

REMARKS: _____

SIGNED: *Sue Harrison*

PHONE: 779-7015

August 11, 2000

C&W
CUMMINS & WHITE, LLP
L A W Y E R S

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

City of Antioch
Office of City Clerk
Third & "H" Street
P.O. Box 5007
Antioch, CA 94531-5007

RECEIVED

AUG 14 2000

CITY OF ANTIOCH
CITY CLERK

ing mail

2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0757
TEL 949-852-1800
FAX 949-852-8510
E-MAIL cw@cwlawyers.com

00/01-1155B

Associated v. City of Antioch

Insured : Holiday Lodge Motel
Policy No. : IM322501
Claim No. : 72156SS
Date of Loss : 02/23/2000
Our File No. : N688

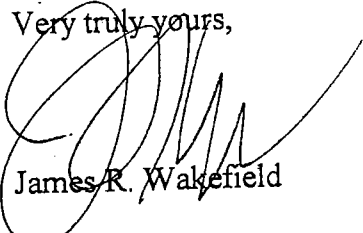
Dear Madam or Sir:

You were previously served with a claim dated March 17, 2000, on behalf of Essex Insurance Company and its policyholder, the Holiday Lodge Hotel, arising out of an incident which occurred on February 23, 2000, in which flood waters from Antioch Creek damaged the Holiday Lodge Motel, located at 1500 West 10th Street, Antioch, California. On May 25, 2000, you served a notice of rejection of said claim.

Enclosed please find a claim against the City of Antioch on behalf of Associated International Insurance Company ("Associated") and its insured C.B. Patel and Govind Patel dba: Holiday Lodge Motel ("Holiday"). This claim is made in order to preserve Associated's and Holiday's rights in this action, as these parties have not served a claim for damages arising from this incident.

Thank you for your attention in this regard, and please do not hesitate to contact our office if you have any questions or require additional information.

Very truly yours,


James R. Wakefield

JRW:jw

Enclosure

|N688|137807.WPD|



CONTRA COSTA COUNTY
MUNICIPAL RISK MANAGEMENT INSURANCE AUTHORITY
1911 SAN MIGUEL DRIVE • SUITE 200 • WALNUT CREEK, CA 94596-5332
(925) 943-1100 • FAX (925) 946-4183



August 9, 2000

Phil Harrington
Deputy Director of Public Works
City of Antioch
P.O. Box 5007
Antioch, Ca 94531-5007

RECEIVED

AUG 14 2000

CITY OF ANTIOCH
CITY ATTORNEY

RE:	CLAIMANT:	Holiday Lodge Motel
	CLAIM NO.:	GL-000573
	OUR PRINCIPAL:	City of Antioch
	DATE OF INCIDENT:	2/23/00

Dear Mr. Harrington:

In your letter of June 6, 2000, you indicated that the City of Antioch has the maintenance responsibility for the culvert under Tenth Street. You also indicated that the existing channel does not have sufficient capacity to handle the severity of storms that have created flooding conditions in this area in the past. Maintenance of the existing system is not an issue in this case.

REQUEST FOR CITY ACTION:

I have been asked to request copies of maintenance records for the Tenth Street culvert. Please forward copies of such records for the three-month period prior to and including the loss date of February 23, 2000.

Sincerely,

Anthony S. Allenza

Anthony S. Allenza
Liability Claims Adjuster

ASA:sep

Cc: Bill Galstan – City of Antioch





RECEIVED
JUN 13 2000

June 6, 2000

CITY OF ANTIOCH
CITY ATTORNEY

Anthony S. Allenza
Liability Claims Adjuster
Contra Costa County
Municipal Risk Management Insurance Authority
1911 San Miguel Drive, Suite 200
Walnut Creek, CA 94596-5332

RE: Holiday Lodge Motel
Claim No. GL-000573

Dear Mr. Allenza:

This letter is in response to your request for information regarding the potential claim against the City of Antioch by Holiday Lodge Motel and/or Essex Insurance Company. I will address each request for City action based upon the numerical identification used in your April letter addressed to Mr. Bill Galstan, our City Attorney.

- Item No. 2 - The Contra Costa County Flood Control District has had the responsibility for the planning, design, and construction of the flood control system improvement in the area of 1500 West Tenth Street. The flood control improvements are part of the District's old County Service Area D-3 which was converted over into Drainage Area 55. Their improvement plan calls for the construction of stilling and sedimentation basins, trapezoidal earth channels, reinforced concrete box culverts, and rectangular concrete channels. The District collects fees from new development within Drainage Area 55 for planning, design and construction of these facilities.
- Item No. 3 - The City of Antioch has the maintenance responsibility for the culvert under Tenth Street and for the improved portion of the channel downstream of the Holiday Lodge to the BNSF Railroad crossing.
- Item No. 4 - The City accepts maintenance responsibilities for the sections of channel that have been improved to their ultimate capacity design level. In this case, it would be the 100 year storm(Q100) event.


- Item No. 5 - The existing channel does not have sufficient capacity to handle the severity of storms that have created flooding conditions in this area in the past. Maintenance of the existing system is not an issue in this case.
- Item No. 6 - Existing channel capacity should be verified with the Contra Costa County Flood Control District who maintains these types of records.
- Item No. 7 - The channel system located upstream of Tenth Street is on the Contra Costa County Fairgrounds property.
- Item No. 8 - Impacted businesses include Holiday Lodge, Antioch Veterinary Hospital, Al Eames Ford, City of Antioch Maintenance Service Center, Princess Apartments, Contra Costa County Fairgrounds, Crystal Dairy Products and Kelly's Restaurant.
- Item No. 9 - Lower West Antioch Creek is located within a designated FEMA flood plain and the Holiday Lodge has been inundated with flood waters on many different occasions.
- Item No. 10 - During a flash flood event in April of this year, the Holiday Lodge did experience flood waters entering specific portions of their property. Extent of problems unknown at this time.
- Item No. 11 - Information regarding rainfall data for the amount of rainfall in this area on February 22 and February 23 should be obtained by contacting the Contra Costa County Flood Control District.
- Item No. 12 - At this time there are no quick remedy solutions or any other feasible alternatives that would provide relief to the periodic flooding events that occur in this area. The ultimate solution, as planned by the Flood Control District, is estimated to cost in the millions of dollars and as of now their existing cash revenues within this Drainage Area fall well short.

Holiday Lodge
Page 3

Item No. 13 - I do not have knowledge of any indemnity agreement between the City of Antioch and the Contra Costa County Flood Control District for channel systems that have not been designed and constructed to their ultimate design capacity.

If you need any additional information, please feel free to contact me at (925) 779-6820.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. Harrington".

Phillip Harrington
Deputy Director of Public Works

c: William Galstan, City Attorney



May 25, 2000

RECEIVED
MAY 25 2000
CITY OF ANTIOCH
CITY ATTORNEY

Essex Insurance Company
c/o D.L. Glaze, ASU Group
2027 Grand Canal Blvd, Suite 25
Stockton, CA 95207

Re: Holiday Lodge Motel

Dear Sir:

NOTICE IS HEREBY GIVEN that the claim which you presented to the City of Antioch on March 20, 2000 was REJECTED on May 9, 2000 by the City Council.

WARNING

Subject to certain exceptions, you have only six (6) months from the date that this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. This warning does not extend the statute of limitations involving any federal cause of action.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult with an attorney, you should do so immediately.

Sincerely,

L. JOLENE MARTIN
City Clerk

/jc

cc: William Galstan, City Attorney
Anthony Allenza

Office of City Clerk
Third & "H" Street
P. O. Box 5007
Antioch CA 94531-5007
(925) 779-7009
FAX (925) 779-7002

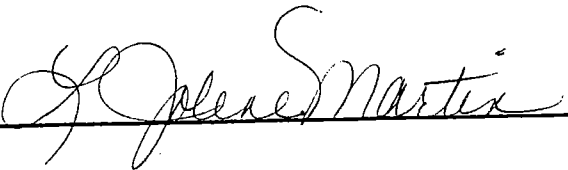
(PROOF OF SERVICE BY MAIL - 1013 a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
COUNTY OF CONTRA COSTA) ^{ss}

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is Office of the City Clerk for the City of Antioch, Third and "H" Streets, P.O. Box 5007, Antioch, California 94531-5007. On May 25, 2000, I served the within Notice, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Antioch, California addressed as follows:

Essex Insurance Company
c/o D.L. Glaze, ASU Group
2027 Grand Canal Blvd, Suite 25
Stockton, CA 95207

I, L. Jolene Martin, certify (or declare), under penalty of perjury, that the foregoing is true and correct. Executed on May 25, 2000 at Antioch, California.





CONTRA COSTA COUNTY
MUNICIPAL RISK MANAGEMENT INSURANCE AUTHORITY

1911 SAN MIGUEL DRIVE • SUITE 200 • WALNUT CREEK, CA 94596 -5332
(925) 943-1100 • FAX (925) 946-4183



April 26, 2000

Mr. Bill Galstan
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

*4/27/00
to Phil H
to respond
to #5 2-13*

RE:	CLAIMANT:	Holiday Lodge Motel & Essex Insurance Company
	CLAIM NO:	GL-000573
	OUR PRINCIPAL:	City of Antioch
	DATE OF LOSS:	2/23/00

Dear Mr. Galstan:

This letter is my initial report concerning this claim.

By letter dated March 17, 2000, the City received written notice of a potential claim against it by Holiday Lodge Motel and/or Essex Insurance Company. The letter came from the independent insurance adjusters (D. L. Glaze/the ASU Group) representing Essex Insurance Company and its policy holder the Holiday Lodge Motel located at 1500 West Tenth Street, Antioch.

The claim alleges that flood control dislocation is inadequate to convey the runoff and that runoff inundated thirty units at the insured's motel. It further alleges that there have been similar occurrences in the past. It further alleges that the City of Antioch and Contra Costa County Flood Control and Water Conservation District are aware of the runoff problems at this location but have apparently made little or no effort to mitigate the potential of damage at both the insured's location and surrounding locations. Although the letter is couched as a "potential claim", I believe the letter should be treated as a claim.

REQUEST FOR CITY ACTION:

1. Please issue a notice of rejection of this claim and forward a copy for my records.
2. It is my understanding that the Contra Costa Flood Control District and not the City of Antioch is responsible for the planning, design, construction, and operation of the flood control system in the area of 1500 West Tenth Street, in Antioch. Please confirm.

3. It is my understanding that the City is responsible for maintaining and clearing the culvert at Tenth and O Street, Please confirm.
4. It is my understanding that the City has no other responsibilities in regard to the flood control system. Please confirm.
5. In my discussions with Phil Harrington, he indicated that maintenance is not an issue. Please confirm.
6. It is my further understanding that the design capacity for the flood control system is barely sufficient to cover a five-year flood and that there is no money for improvement. Please confirm.
7. It is my understanding that upstream of the culvert at Tenth and O Streets is the Contra Costa County Fairgrounds. Please confirm.
8. It is my further understanding that the Holiday Lodge Hotel is not the only property impacted by flooding. Also impacted is Al Aimes Ford, the veterinary hospital, and the City property. Please confirm.
9. It is my further understanding that the general area is a flood plain and the hotel has been inundated by flooding several times. Please confirm.
10. It is my understanding that in a recent flash flood which occurred on the weekend of April 15/16, 2000, the Holiday Lodge did again have flooding in the back. Please confirm.
11. Please provide the National Weather Service data for the amount of rainfall on February 22, February 23, and February 24, 2000 in Antioch.
12. Please clarify what feasible alternatives, if any, exist for the City of Antioch for lowering the risks of flooding in the subject area.
13. Please inform me if there is any written indemnity agreement between the City and the Contra Costa County Flood Control District. If so, please provide a copy with the indemnification provisions.

DESCRIPTION OF INCIDENT:

DEPARTMENT INVOLVED:

Public Services.

DATE, TIME AND PLACE OF INCIDENT:

This incident took place on February 23, 2000 at 1500 West Tenth Street, Antioch.

FACTS OF INCIDENT:

A flash flood destroyed rooms at the Holiday Lodge Motel. According to a newspaper article, more than two feet of rushing water from a nearby creek poured in late in the night on February 22nd. Allegedly, the National Weather Service recorded more than 1.7 inches of rain at the Black Diamond Regional Preserve in Antioch between 7:00 AM Tuesday, February 22 and 7:00 AM Wednesday, February 23.

EVALUATION OF LIABILITY:

Doubtful. The hotel exists in a known flood plain. Also, it does not appear that the City substantially participated in any flood control efforts which are the responsibility of the Contra Costa County Flood Control District. It further appears that the flooding was in excess of the Flood Control District's design capacity. It is expected that any claim that is pursued would be under theories of inverse condemnation.

COVERAGE:

Under the Memorandum of Coverage, Section VII – Exclusions, this agreement does not apply to:

10. Claims arising out of or in connection with land use regulation, land use planning, the principles of eminent domain, condemnation proceedings or inverse condemnation by whatever name called, and whether or not liability accrues directly against the "covered party" or by virtue of any agreement entered into by or on behalf of "covered party".

However, the above exclusion shall not apply to inverse condemnation liability arising from accidentally-caused physical injury to or destruction of tangible property, including all resulting loss of use of such property for which the covered party may be legally responsible. Notwithstanding what is stated in the application declarations, the "limit of coverage" for claims described in this exception will be subject to a per occurrence and/or aggregate sublimit of \$250,000 per member.

The Claim Manager will advise further in a separate letter on this issue.

CO-DEFENDANT:

Contra Costa County Flood Control District

CLAIMANT DATA:

Name:	Holiday Lodge Motel and Essex Insurance Company
In Care of:	D. L. Glaze/the ASU Group
Street:	2027 Grand Canal Boulevard, Suite 25
City:	Stockton, CA 95207
Attention:	Steven Aitchison, Branch Manager/General Adjuster

DAMAGES/INJURIES:

Mr. Aitchison told me that his company has placed a \$500,000 reserve on the loss. Holiday Lodge Motel hired a public adjuster to represent its interests against the insurance carrier and perhaps the public entities. It is unclear what the limit of coverage is on the flood policy issued by Essex Insurance. It is expected that there are uncovered losses since flood coverage is limited. Mr. Aitchison informed me that a letter similar to the one sent to the City has also been sent to the Contra Costa County Flood Control District.

RESERVES:

Precautionary reserves have been placed at \$20,000 for indemnity.

COMMENTS:

It is my understanding that in years past, a claim was presented by Anchor Glass (its property is in the same watershed) to the Contra Costa County Flood Control District. Atty. Tim Ryan successfully defended the case.

Sincerely,

Anthony S. Allenza

Anthony S. Allenza
Liability Claims Adjuster

ASA:sep



CONTRA COSTA COUNTY
MUNICIPAL RISK MANAGEMENT INSURANCE AUTHORITY

1911 SAN MIGUEL DRIVE • SUITE 200 • WALNUT CREEK, CA 94596

(925) 943-1100 • FAX (925) 946-4183

RECEIVED

MAR 27 2000

CLAIMS ACKNOWLEDGEMENT

CITY OF ANTIOCH
CITY ATTORNEY

TO: Bill Salsten
CITY: Antioch

DATE: 3-24-00

RE: CLAIMANT: Holiday Lodge Motel
D/L: 2-23-00
ASSIGNED FILE #: GL-000573

We are in receipt of the above captioned claim, and wish to advise you that it has been
assigned to Tony Allamano for handling.

Thank you for your anticipated cooperation and assistance.

Rich Buys/ddb
LIABILITY CLAIMS MANAGER

CONTRA COSTA MUNICIPAL RISK MANAGEMENT

LIABILITY/LOSS NOTICE FORM

Use this form to report any incident or verified claim in which the city may be liable
PERSONAL AND CONFIDENTIAL IN ANTICIPATION OF LITIGATION

FROM: ANTIOCH

(city or town)

TO:

• CONTRA COSTA COUNTY
MUNICIPAL RISK MANAGEMENT
Insurance Authority
1911 San Miguel Drive, Suite 200
Walnut Creek, CA 94596
Attn: Claims Manager

CITY CLAIM # 00 / 01 1 1 5 5 ()
policy yr. log number

DATE & TIME OF LOSS 2/23/00

DEPARTMENT LOCATION CODE P W
(Up to 5 letters)

*If one incident has multiple claimants, use same claim #, but add letter suffix and enter each in log, i.e. AL001(A).

COMMENTS TO ADJUSTER _____

CLAIMANT/INJURED'S NAME

ADDRESS

PHONE

The ASU Group (Essex Insurance)
for Holiday Lodge Motel

2027 Grand Canal Blvd. #25, Stockton, CA 95207
(209) 957-4967

CLAIMANT'S ATTORNEY

ADDRESS

PHONE

WITNESS NAME

ADDRESS

PHONE

CITY EMPLOYEE INVOLVED/CONTACT

DEPARTMENT

PHONE

LOCATION OF OCCURRENCE Holiday Lodge Motel, 1500 W. 10th Street, Antioch

DESCRIPTION OF OCCURRENCE/DAMAGE alleges flood damage

POLICE/CHP REPORT # _____
(or enter "none")

CITY VEHICLE/DRIVER # _____

ENCLOSURES:

VERIFIED CLAIM ☒
(check if included)

POLICE REPORT ☐

PHOTOS ☐

OTHER _____

DATE 3/21/00 SUBMITTED BY Sue Harrison PHONE NO. 779-7015

DISTRIBUTION:
Original to Risk Mgmt. Office

BCJPIA-LLN-788



D. L. Glaze/The ASU Group

2027 Grand Canal Blvd., Suite 25
Stockton, CA 95207
Phone: 209-957-4967
Fax: 209-957-0884

Adjusting Services ■ Catastrophe & Temporary Services ■ Recovery Unlimited ■ Risk Management ■ D. L. Glaze

March 17, 2000

Our File No. 142-00-10144-1 (1890)

CITY OF ANTIOCH
PUBLIC WORKS DEPARTMENT
P.O. Box 5007
Antioch, CA 94531-5007

RECEIVED
MAR 20 2000
CITY OF ANTIOCH
CITY ATTORNEY

RECEIVED

Re: Holiday Lodge Motel

MAR 20 2000

CITY OF ANTIOCH
ENGINEER

To Whom It Concern:

We are independent insurance adjusters representing Essex Insurance Company and their policy holder the Holiday Lodge Motel located at 1500 W. 10th Street in Antioch, California.

On or about February 23, 2000, our insured's property sustained significant damage due to rapidly rising flood waters which appear to have inundated from the west Antioch Creek at the 10th Street crossing and down stream through the local Ford Dealership. It appears that Flood Control dislocation is inadequate to convey the runoff and that runoff inundated thirty units at our insured's hotel. In addition to the inundated of hotel rooms there were similar inundated of various office and storage areas on the property. Our principal's policy holder has suffered significant damage to the building and business personal property, as well as a significant loss of income due to the fact that approximately seventy percent of the hotel rooms available are no longer habitable. Information provided by our insured indicates that similar occurrences have occurred in the past. Information made available to us would appear to indicate that the City of Antioch and the Contra Costa County Flood Control and Water Conservation District are aware of the runoff problems at this location but have apparently made little or no effort to mitigate the potential of damage at both our insured's location and surrounding locations.

This letter will serve as formal notice to you that a potential claim against you by the policy holder and/or the insurance carrier. We are currently in the process of documenting the damages and preparing appropriate estimates and calculations as to the extent of our insured's loss. Preliminary indications are that our insured's loss will exceed \$250,000.00.

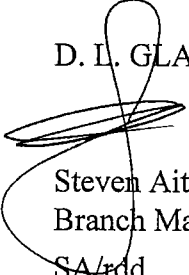
CITY OF ANTIOCH
PUBLIC WORKS DEPARTMENT
Re: Holiday Lodge Motel
March 17, 2000
Page 2

If you have insurance to protect yourself against this liability, we would recommend that you immediately notify your insurance carrier, and place them in touch with our office.

Please feel free to contact the undersigned directly if you have any questions.

Very truly yours,

D. L. GLAZE/THE ASU GROUP



Steven Aitchison, RPA
Branch Manager/General Adjuster
SA/rdd

cc: Sheila Beston - D. L. Glaze/The ASU Group - Walnut Creek Office

**Anchor Glass Container Corporation et al v. Contra Costa County Flood
Control and Water Conservation District (1993)**

GORDON, WATROUS, RYAN, LANGLEY, BRUNO & PALTENGHI *A Law Corporation*

Timothy J. Ryan
Peter D. Langley
Richard S. Bruno
Bruce C. Paltenghi
Dylan T. Radke
Fiona Q. Burger

George R. Gordon
(1910 – 1993)

Thomas A. Watrous
(Retired)

RECEIVED

E-Mail: Tim@gdwp.com
Direct Tele: 925.231.0239

Mailing Address: P.O. Box 630
Martinez, CA 94553

January 6, 2011

Mr. Phil Harrington
Director Capital Improvements/
Water Rights
City of Antioch
Administrative Office
1201 W. 4th St.
Antioch, CA 94509

Re: *Anchor Glass Container Corporation, et al. v. Contra Costa
County Flood Control and Water Conservation District, et al.*
Contra Costa County Superior Court No. C 94-00042

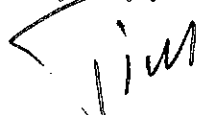
Dear Phil:

It was great to get your call a few days ago and also to learn that you are still with and doing well at the City of Antioch. As you requested, I have obtained a few documents from the court file concerning the Anchor Glass litigation arising out of the flooding of the Anchor Glass Plant in Antioch on January 13, 1993. I have enclosed a copy of the complaint filed January 5, 1994, in the Contra Costa County Superior Court (Case No. C 94-00042). You will note that the complaint references the flooding date of January 13, 1993 (p. 1) and also sets forth damage claims of \$3.3 million (pp. 5 and 8). The Government Tort Claim filed July 7, 1993, is also included. Finally, I have included the Statement of Decision entitled "Tentative Decision" filed August 12, 1996, following a court trial of this matter by Judge Robert McGrath.

I hope all of this documentation will be helpful to you in your effort to obtain grant funding for the flood control improvements still needed along the West Antioch creek. If I can be of any further assistance, please do not hesitate to give me a call.

Happy New Year!

Very truly yours,



TIMOTHY J. RYAN

TJR:bsg
Enclosures

FILED

1994 JAN -5 P 2:34

C. Aguilar Jacala

7562-001

M. STUART GOLDIN, ESQ.
Bar No. 132834
COZEN AND O'CONNOR
501 West Broadway, Suite 1610
San Diego, California 92101
(619) 234-1700
DAVID P. LANFERMAN, ESQ.
Bar No. 071593
LANFERMAN, FISHER & HASHIMOTO
39899 Balentine Drive, Suite 330
Newark, California 94560-5359
(510) 623-4150

Attorneys for Plaintiffs ANCHOR GLASS CONTAINER CORPORATION and
RLI INSURANCE COMPANY

SUMMONS ISSUED

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

ANCHOR GLASS CONTAINER CORPOR-)
ATION and RLI INSURANCE COMPANY,)

Plaintiffs,)

vs.)

CONTRA COSTA COUNTY FLOOD)
CONTROL AND WATER CONSERVATION)
DISTRICT, COUNTY OF CONTRA)
COSTA, HESS CONSTRUCTION)
COMPANY, INC. and DOES 1)
through 10, inclusive,)

Defendants.)

CASE NO.C 94 - - 00042

COMPLAINT IN NEGLIGENT
DESIGN AND CONSTRUCTION
AND INVERSE CONDEMNATION

NOTICE: (LOCAL RULE 5)
THIS CASE IS ASSIGNED TO
DEPT. _____ AND COMES
UNDER GOVERNMENT CODE 68600

Come now, plaintiffs, ANCHOR GLASS CONTAINER CORPORATION and RLI
INSURANCE COMPANY, by and through their undersigned counsel, allege
and state their complaint against the defendants as follows:

I.

JURISDICTION AND VENUE

1. The flood loss which forms the basis of this lawsuit
occurred on January 13, 1993 at the plaintiff ANCHOR GLASS CONTAINER

RECEIVED
JAN 6 1994
SUPERIOR COURT ADMINISTRATION

1 CORPORATION's premises located at H and O Streets, Antioch, Contra
2 Costa County, California.

3 2. Jurisdiction and venue in this matter are conferred by
4 California Code of Civil Procedure, §§ 393 and 394.

5 II.

6 PARTIES

7 3. Plaintiff ANCHOR GLASS CONTAINER CORPORATION (hereinafter
8 "ANCHOR GLASS") is a corporation organized and existing under the laws
9 of the State of Delaware, with its principal place of business in the
10 State of Florida.

11 4. Plaintiff RLI INSURANCE COMPANY (hereinafter "RLI") is a
12 corporation incorporated under the State of Illinois and at all
13 relevant times was and is authorized to engage in the insurance
14 business in the State of California.

15 5. Defendant CONTRA COSTA COUNTY FLOOD CONTROL AND WATER
16 CONSERVATION DISTRICT (hereinafter "CCCFC") at all times herein
17 mentioned was a governmental entity organized under the laws of
18 California and authorized to engage in California in the types of
19 activities described herein.

20 6. Defendant COUNTY OF CONTRA COSTA (hereinafter "COUNTY") is a
21 governmental subdivision of the State of California.

22 7. Defendant HESS CONSTRUCTION COMPANY, INC. (hereinafter
23 "HESS") is a corporation incorporated under the laws of the State of
24 California and is authorized to engage in the construction business.

25 8. The true names and capacities, whether individual,
26 corporate, associate or otherwise, of defendants designated herein as
27 DOES 1 through 10, inclusive, and each of them, are unknown to
28 plaintiffs, who therefore sue said defendants by such fictitious

1 names. Plaintiffs will amend this complaint to allege their true
2 names and capacities when ascertained. Plaintiffs are informed and
3 believe and therefore aver that each of the fictitiously named
4 defendants are legally responsible in some manner for the occurrence
5 herein alleged, and that plaintiffs' losses herein alleged were
6 proximately caused by their conduct.

7 9. At all times herein mentioned, each defendant was the agent
8 and/or employee and/or partner and/or independent contractor of each
9 remaining defendant, and was at all times herein mentioned acting
10 within the purpose and scope of said agency, partnership, employment,
11 independent contract, and/or relationship, and with the consent,
12 authorization, permission, and ratification of co-defendants, and each
13 of them.

14 10. Plaintiffs were required to and did file on June 30, 1993 an
15 Administrative Claim Against Public Entity with defendant COUNTY and
16 with defendant CCCFC pursuant to Government Code §§ 905, 905.2, 910
17 and 910.2 for damage to real property, personal property, disruption
18 of business, lost product, loss of earnings, costs for repair and
19 restoration of plaintiff ANCHOR's facilities and property, and special
20 damages for increased costs of conducting certain operations on
21 claimant's property, flood protection and abatement costs and damages,
22 and other related damage, loss and expense. A true and correct copy
23 of said claim is attached hereto as Exhibit "A." Thereafter the
24 defendants rejected plaintiffs' claim for damages.

25 11. Prior to and on or about January 12 and 13, 1993, plaintiff
26 ANCHOR operated manufacturing and warehousing facilities at Fourth and
27 O Streets, Antioch, California.

28 ///

1 12. Prior to and on or about January 12 and 13, 1993 defendants
2 CCCFC, COUNTY, HESS and DOES 1 through 10, inclusive, and each of
3 them, planned, designed, engineered, constructed or partially
4 constructed channel improvements to the water course known as West
5 Antioch Creek, extending upstream from plaintiff ANCHOR's property,
6 and performed work and altered the condition of plaintiff ANCHOR's
7 property in the vicinity of West Antioch Creek, including removal of
8 levees and embankment and alteration of the water course, and failed
9 to complete the designed channel improvements in such a manner as to
10 increase the probability of flood damage to plaintiff ANCHOR's
11 property. Said work was conducted or omitted in a negligent manner,
12 as a result of which, on or about January 12 and 13, 1993 and
13 continuing thereafter, plaintiff ANCHOR sustained damages at its
14 property in Antioch adjacent to the West Antioch Creek.

15 13. The loss which forms the basis of this lawsuit occurred on
16 or about January 12 and 13, 1993 after a rainstorm occurring on said
17 dates dropped rainfall in the said area.

18 14. The water flow rate through the said channel improvements
19 was within the design criteria of the said improvements.

20 15. The construction or maintenance of the said channel
21 improvements imposed an unreasonable risk of harm to plaintiff ANCHOR,
22 and such unreasonable design, construction and maintenance constituted
23 a substantial cause of the damage sustained by plaintiff ANCHOR.

24 16. The actions of defendants were unreasonable, as the gravity
25 of the private harm sustained by plaintiff ANCHOR outweighed the
26 public need for the said channel improvements.

27 ///

28 ///

17. Said design, construction and maintenance was unreasonable in that the defendants failed to install rip rap at the transit point of the concrete channel and the creek bed and failed to compact the backfill at the said transit point.

18. At the time of said flood damage on January 12 and 13, 1993, there was in effect an insurance policy issued by plaintiff RLI against losses and damage of the types sustained.

19. Pursuant to said insurance policy and a claim for benefits thereunder filed by its insured, ANCHOR, plaintiff RLI paid to plaintiff ANCHOR an amount in excess of Three Million Three Hundred Thousand Dollars (\$3,300,000.00). In addition, there are losses sustained by plaintiff ANCHOR not covered by said policy.

20. Plaintiff RLI is subrogated to the rights of plaintiff ANCHOR in this lawsuit for the amounts paid by plaintiff RLI.

FIRST CAUSE OF ACTION

NEGLIGENCE

(Against All Defendants)

21. The plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 20 of this complaint as fully as though set forth at length herein.

22. Defendants CCCFC, COUNTY, HESS and DOES 1 through 10, inclusive, and each of them, planned, designed, engineered, constructed or partially constructed the said channel improvements in an unreasonable, careless and negligent manner and without due regard for the rights, safety and position of the plaintiff ANCHOR's property and business.

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1 23. At all times herein mentioned, defendants and each of them
2 were responsible in whole or part for the operation, management and/or
3 maintenance of the channel improvements, levees and embankments in the
4 area occupied by plaintiff ANCHOR. Defendants CCCFC, COUNTY, HESS and
5 DOES 1 through 10 owed to plaintiff ANCHOR a duty to exercise due and
6 reasonable care in the planning, design, engineering and construction
7 of the channel improvements to the said water course known as West
8 Antioch Creek so as not to cause injury or damage to the property and
9 business of plaintiff ANCHOR.

10 24. Notwithstanding such duty, defendants CCCFC, COUNTY, HESS
11 and DOES 1 through 10, inclusive, and each of them, through the acts
12 of their authorized agents, employees, servants, and/or
13 representatives committed one or more of the following acts or
14 omissions to act during the planning, designing, engineering,
15 construction, operation, management and/or maintenance of said channel
16 improvements:

- 17 a) Carelessly and negligently increased and enhanced the
18 propensity for flood damage to plaintiff ANCHOR's downstream
19 property;
20 b) Failed to install rip rap at the transition point between
21 the concrete channel and the creek bed;
22 c) Failed to compact the backfill at the said transition point;
23 and
24 d) Were otherwise careless and negligent.

25 25. As a direct and proximate result of the aforementioned
26 negligent acts and/or omissions to act, flood damage occurred at
27 plaintiff ANCHOR's facility which severely damaged plaintiff ANCHOR's
28 property and business. As a direct and proximate result of the

1 aforementioned negligent acts and/or omissions to act, plaintiffs have
2 sustained damages in excess of Three Million Three Hundred Thousand
3 Dollars (\$3,300,000.00), an amount to be proved at trial.

4 **SECOND CAUSE OF ACTION**

5 **INVERSE CONDEMNATION**

6 **(Against Defendants CCCFC, COUNTY and DOES 1 through 5, Inclusive)**

7 26. Plaintiffs incorporate by reference the allegations of
8 paragraphs 1 through 25 of this complaint as though fully set forth at
9 length herein.

10 27. Prior to and on January 12 and 13, 1993, defendants CCCFC,
11 COUNTY and DOES 1 through 5, were governmental entities organized and
12 existing under the laws of the State of California, which, for the
13 purposes of flood control and water conservation and the general
14 public welfare, had planned, designed, engineered, constructed or
15 partially constructed, operated and maintained channel improvements to
16 the water course known as West Antioch Creek, extending upstream from
17 plaintiff ANCHOR's property. The said defendant public entities and
18 their contractors performed work and altered the condition of
19 plaintiff ANCHOR's property in the vicinity of the West Antioch Creek,
20 including removal of levees and embankments and alteration of the
21 water course, failed to install rip rap at the transit point of the
22 concrete channel and the stream bed and failed to compact the backfill
23 at the transition point levee.

24 28. Balancing the public need for the said channel improvements
25 as constructed against the gravity of the private harm to which
26 plaintiff ANCHOR was exposed, the said private harm to plaintiff
27 Anchor outweighed the public need.

28 ///

1 29. Balancing the public need against the gravity of the private
2 harm to which plaintiff ANCHOR was exposed and which it sustained, the
3 aforesaid actions and failure to act of defendants CCCFC and COUNTY
4 were unreasonable.

5 30. The aforesaid acts and omissions of defendants CCCFC, COUNTY
6 and DOES 1 through 5, substantially caused the damages sustained by
7 plaintiff ANCHOR.

8 31. As a direct and necessary result of said defendants'
9 planning, designing, engineering, constructing, partially
10 constructing, operating and managing the said channel improvements,
11 plaintiff ANCHOR's property was flooded on January 12 and 13, 1993,
12 which resulted in damage to plaintiff ANCHOR's real property, personal
13 property, disruption of business, lost product, loss of earning, costs
14 for repair and restoration and special damages for increased cost of
15 conducting certain operations on plaintiff ANCHOR's property, flood
16 protection and abatement costs as well as other related damages,
17 losses and expenses.

18 32. As a direct and proximate result of the above described acts
19 and omissions by the said defendants, plaintiff ANCHOR's property and
20 business has been substantially damaged in an amount in excess of
21 Three Million Three Hundred Thousand Dollars (\$3,300,000.00), an
22 amount to be proved at trial.

23 33. Plaintiffs have received no compensation as of this date for
24 the substantial damage described above.

25 34. Plaintiffs have incurred and will incur attorney, appraisal
26 and engineering fees because of this proceeding in amounts that cannot
27 yet be ascertained, which are recoverable in this action under the
28 provisions of § 1036 of the California Code of Civil Procedure.

1 WHEREFORE plaintiffs pray for judgment against defendants and
2 each of them as follows:

- 3 1. In the amount of damages paid by plaintiff RLI to its
4 insured, plaintiff ANCHOR, under its policy;
- 5 2. For the losses sustained by plaintiff ANCHOR not reimbursed
6 to it by its insurer, the amount to be proved at trial;
- 7 3. For prejudgment interest;
- 8 4. For reasonable attorney, appraisal and engineering fees
9 according to proof;
- 10 5. For costs of suit herein incurred;
- 11 6. For such other relief as the Court deems just and fair under
12 the circumstances.

13 DATED: January 4, 1994

COZEN AND O'CONNOR

14
15 BY: 

M. STUART GOLDEN

16
17 LANFERMAN, FISHER & HASHIMOTO

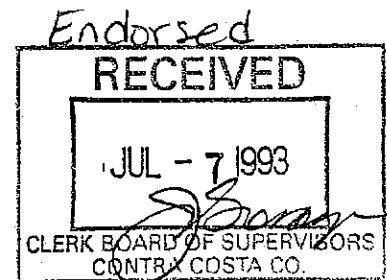
18
19 DATED: January 4, 1994

20 BY: 

DAVID P. LANFERMAN

21 ATTORNEYS FOR PLAINTIFFS ANCHOR
22 GLASS CONTAINER CORPORATION AND
23 RLI INSURANCE COMPANY
24
25
26
27
28

CLAIM AGAINST PUBLIC ENTITY
[Govt. Code §§ 905, 505.2, 910, 910.2]



TO: THE COUNTY OF CONTRA COSTA AND CONTRA COSTA COUNTY
FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Claimant ANCHOR GLASS CONTAINER CORPORATION, for itself, its insurers, assignees, and others claiming by or through ANCHOR GLASS CONTAINER CORPORATION hereby makes claim against THE COUNTY OF CONTRA COSTA and the CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, and makes the following statements in support of the claim:

1. The Claimant's post office address is: ANCHOR GLASS CONTAINER CORPORATION, 4343 Anchor Plaza Parkway, Tampa, Florida, 33634-7513 [Attention: Eugene K. Pool].

2. All notices or other communications with regard to this claim should be sent to the attorneys for the Claimant as follows:

David P. Lanferman, Esq.
VARNI, FRASER, HARTWELL, LANFERMAN & RODGERS
22771 Main Street
P.O. Box 570
Hayward, CA 94543
(510) 886-5000
(510) 838-8797 FAX

M. Stuart Goldin, Esq.
COZEN & O'CONNOR
Suite 1610
510 W. Broadway
San Diego, CA 92101
(619) 234-1700
(619) 234-7831 FAX

3. The date and place of the occurrence giving rise to this claim are the flooding and resulting damages and related losses inflicted on Client at its property and its facilities located at Anchor Glass Container, 1400 W. 4th Street, Antioch, California, in the vicinity of West Antioch Creek, on or about January 12, 1993 and continuing thereafter.

4. The circumstances giving rise to this claim are as follows: prior to January 12, 1993, Claimant is informed that the above-named public entities, and their contractors, planned, designed, engineered, constructed, or partially constructed, channel improvements to the water course known as West Antioch Creek, extending upstream from Claimant's property, and the public entities and their contractors performed work and altered the condition of the Claimant's property in the vicinity of West Antioch Creek, including removal of levees and embankments and alteration of the water course, and failed to complete the designed

EXHIBIT "A"

channel improvements, in such a manner as to increase the probability of flood damage to Claimant's property, and such work was conducted or omitted in a negligent manner, as a result of which, on or about January 12, 1993, and continuing thereafter, Claimants sustained damages at their property in Antioch adjacent to the West Antioch Creek.

5. Claimant's injuries include, without limitation, damages to real property, damages to personal property, disruption of business, lost product, loss of earnings, costs for repair and restoration of Claimant's facilities and property, and special damages for increased costs of conducting certain operations on Claimant's property, flood protection and abatement costs and damages, and other related damage, loss, and expense. The claim as of the date of this claim is in an amount that would place it within the jurisdiction of the superior court. The claim is based upon injury, loss and or damage in an amount to be proved later.

6. The names of the public employees causing the Claimant's injuries are presently unknown.

DATED: June 30, 1993

By: 

DAVID P. LANFERMAN

on behalf of Claimant ANCHOR
GLASS CONTAINER CORPORATION

FRAM Spreadsheet Tab Information:

Inputs Tab

BCA Summary Tab

high value building area inundated (sq.f.)

Industrial Properties

Ratio Depreciated Value to Replacement Value

Average Flood depth above ground level (f)

low value building area inundated (sq.f.)

medium value building area inundated (sq.f.)

high value building area inundated (sq.f.)

Agricultural Production

Corn	ac.
------	-----

Rice ac.

Walnuts ac.

Almonds ac.

Cotton	ac.
--------	-----

Tomatoes ac.

Wine Grapes	ac.
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Alfa ac.

Pasture	ac.
---------	-----

Safflower ac.

Sugar Beets	ac.
-------------	-----

Beans	ac.
Oil	ac.

Roads

length of arterial roads inundated (miles)

length of major roads inundated (miles)

length of minor roads inundated (miles)

length of unsealed roads inundated (miles)

Extrapolate Y-intercept

N

Summary of Cost-Benefit Analysis

[Return to Menu](#)

Project Name: **Drainage Area 55 - West Antioch Creek Channel Improvement Project**

Description

0

Proposed project **capital** cost: **\$ 4,816,752** [Note: construction costs which are assumed to occur in one year.]

Change in annual O&M costs: **\$ -** [Note: the change in annual O&M costs compared to without project condi

PV of future O&M costs: **\$ -** (at **6%** discount rate over **50** years)

PV of future costs **\$ 4,816,752** [Note: the sum of capital costs plus the PV of O&M costs.]

Benefits

	Actual	Potential	
EAD without project	\$ 499,688	\$ 499,688	[Note: for stormwater projects use "Potential" damage which ignores str
EAD with project	\$ -	\$ -	
Annual Benefit:	\$ 499,688	\$ 499,688	
PV of Future Benefits:	\$ 7,876,005	\$ 7,876,005	(at 6% discount rate over 50 years)

Cost-Benefit Analysis

	Actual	Potential	
Net Present Value (NPV)	\$ 3,059,253	\$ 3,059,253	(at 6% discount rate over 50 years)
Benefit:Cost Ratio	1.635	1.635	

NPV Sensitivity to Discount Rate:

	Actual	Potential
4%	\$ 5,917,627	\$ 5,917,627
5%	\$ 4,305,506	\$ 4,305,506
6%	\$ 3,059,253	\$ 3,059,253
7%	\$ 2,079,308	\$ 2,079,308
8%	\$ 1,296,167	\$ 1,296,167